



California Regulatory Notice Register

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

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TITLE 2. COMMISSION ON STATE MANDATES

TITLE 2. ADMINISTRATION DIVISION 2. FINANCIAL OPERATIONS CHAPTER 2.5. COMMISSION ON STATE MANDATES

NOTICE OF PROPOSED RULEMAKING

The Commission on State Mandates (Commission) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Commission has not scheduled a public hearing for this proposed action. However, if it receives a written request for a public hearing from any interested person or his or her authorized representative no later than 15 days before the close of the written comment period, the Commission will conduct a public hearing on this proposed action on July 29, 2010 and will notify all persons of the date, time, and location of the hearing pursuant to Government Code section 11346.8(a).

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission. The written comment period closes at **5:00 p.m. on July 30, 2010**. The Commission will consider only comments received at the Commission offices by that time. Submit comments to:

Heidi Palchik, Program Analyst
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

AUTHORITY AND REFERENCE

Government Code section 17527, subdivision (g), authorizes the Commission to adopt the proposed regulations. The purpose of the proposed regulations is to (1) encourage the use of electronic filing, (2) move all subvention claim matters to Article 7; and (3) clarify procedures that will increase the ease and efficiency of those procedures, and encourage the reduction of the fiscal and environmental costs of the mandates processes for all parties and interested parties.

Reference citations: Government Code sections 11123, 11346.4, 11347, 11347.1, 17514, 17516–17521, 17525, 17527, 17529, 17530, 17531, 17532, 17551, 17553, 17554, 17556, 17557, 17557.1, 17557.2, 17558.7, 17558.8, 17564, 17560, 17571, 17573, 17574, 17615.1, 17615.4, 17615.7, 17615.8, and 17615.9.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Commission is a seven-member quasi-judicial body authorized to resolve disputes regarding the existence of state-mandated local programs (Gov. Code, § 17500 et seq.) and to hear matters involving applications for a finding of significant financial distress (Welf. & Inst. Code, 17000.6). The purpose of this rulemaking is to encourage increased use of electronic filing and increase the posting of documents on the Commission web site; move subvention claim matters to Article 7 quasi-judicial hearings; and clarify Commission procedures by making the proposed changes.

Therefore, the Commission proposes to add sections 1185.21 and 1189; amend sections 1181, 1181.1, 1181.2, 1181.4, 1183–1183.03, 1183.06–1183.09, 1183.11–1183.12, 1183.131–1183.21, 1183.30–1183.32, 1185, 1185.2–1185.6, 1186–1187.3, 1187.9–1188.31, 1189.1, and 1189.3, and delete sections 1181.3, 1189.4, and 1189.5 of the California Code of Regulations, Division 2, Title 2, Chapter 2.5 with a proposed effective date of January 1, 2011.

I. Expansion of Electronic Filing and Posting

Section 1181.2 consolidates sections 1181.2 and 1181.3 into a single section 1181.2; and expands clarification of the process for electronic filing of documents. This section also provides parties to the mandates process with clear procedures for filing documents, and encourages parties to file documents electronically. Increased use of electronic filing reduces costs and increase efficiency.

II. Designees and Officers

Section 1181.4 identifies the members with a more general definition (a Commission member, as defined by Government Code section 17525, with statutory authority) which defines them in statute, rather than specifically listing them by title.

III. Test Claim Filing

Section 1183 amends section 1183, subdivision (d) to specify that when an omnibus bill is pled, only the relevant pages of the statute, including the Legislative Counsel's Digest and the relevant statutory changes need to be included.

IV. Reasonable Reimbursement Methodology, Included in Parameters and Guidelines

Section 1183.131 authorizes, instead of requires, Commission staff to conduct an informal conference.

V. Quasi-Judicial Hearings

Sections 1183.14, 1183.2, 1186, 1187, 1189.4 and 1189.5 require the Commission to conduct Article 7 quasi-judicial hearings rather than Article 8 informational hearings on parameters and guidelines, amendments to parameters and guidelines and review of State Controller's claiming instructions; make technical and clarifying changes; and define "matter" for purposes of Article 7.

VI. Authority to Dismiss Claims

Sections 1183.08, 1183.2, 1185.6 and 1186 reduce hearing costs, and streamline the process for actions that are administrative in nature.

VII. Amendments to Parameters and Guidelines

Section 1183.2 clarifies the definition of a parameters and guidelines amendment to assist parties in determining when to request an amendment, and when a new test claim filing is required.

VIII. Reasonable Reimbursement Methodology and Statewide Estimate of Costs Developed by the Test Claimant and Department of Finance

Section 1183.30 provides an alternative to submitting proposed parameters and guidelines. In order to keep the reasonable reimbursement methodology and parameters and guidelines process moving without delay, the regulation is amended to clarify that if the claimant does not submit a draft reasonable reimbursement methodology or request an extension of time to do so by the filing date, the claimant must revert to the standard process of submitting parameters and guidelines.

IX. Technical Clarifying Amendments and New Section

- Section 1181.1, subdivision (b) provides a definition for "amendment" of a test claim. The proposed amendment adds the words "of a test claim" for purposes of clarification.
- Section 1181.1, subdivision (r) provides, as the definition for "written material" a nonexhaustive list of examples of "written material." The proposed amendment adds additional items to this nonexhaustive list.

- Section 1183.07 clarifies that a final staff analysis must provide a full analysis with findings supported by substantial evidence and may not simply "describe" the test claim. Implicit in Government Code section 17559 and Code of Civil Procedure section 1094.5 is a requirement that the Commission "must make findings that bridge the analytic gap between the raw evidence and the ultimate decision or order." (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515, at p. 515.) This change in the regulation conforms the regulation to current law and practice.
- Section 1185 clarifies when a claimant notifies the Commission that it intends to pursue an incorrect reduction claim on behalf of a class of claimants.
- Section 1185.2 moves the process for joining a consolidated claim to a new section 1185.21. Section 1185.21 includes the existing provisions from Section 1185.2 regarding joining a consolidated incorrect reduction claim.
- Section 1185.6 establishes procedures for the original claimant in a consolidated incorrect reduction claim to withdraw the claim.
- Section 1187.2 clarifies that the Commission is required to hold at least one informational hearing under Article 8, section 1189, before assignment of a matter to a hearing panel; and moves provisions that require that the hearing panels be rotated among the members of the Commission to assure that the panels are not comprised of a fixed composition of members to section 1189.
- Section 1188.3 adds a reference to the procedures required by Section 1183.2, subdivision (i) requiring notice and an opportunity for another claimant to take over the claim with regard to a request to withdraw a proposed amendment to parameters and guidelines, and deletes reference to commission authority to dismiss withdrawn claim.
- Section 1189 adds new section to clarify that assignment of a matter to a hearing panel or hearing officer is considered at an informational hearing.
- Sections 1187.3, 1187.9, 1188, 1188.1, 1188.2, 1188.3, 1188.31, and 1189.1 make non-substantive technical amendments.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Commission has made the following initial determinations:

Mandate on local agencies and school district: None
 Cost or savings to any state agency: Minor
 Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None
 Other non-discretionary cost or savings imposed on local agencies: None
 Cost or savings in federal funding to the state: None
 Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None
 Significant effect on housing costs: None
 Cost impacts on a representative private person or business: The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.

Small Business Determination: Because the Commission has no jurisdiction over small businesses, the proposed regulatory action will have no impact on small businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Commission must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Commission invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Heidi Palchik, Program Analyst
 Commission on State Mandates
 980 Ninth Street, Suite 300
 Sacramento, CA 95814
 Telephone: (916) 323-3562
 (heidi.palchik@csm.ca.gov)

The backup contact person for these inquiries is:

Nancy Patton, Assistant Executive Director
 Commission on State Mandates
 980 Ninth Street, Suite 300
 Sacramento, CA 95814
 Telephone: (916) 323-3562
 (nancy.patton@csm.ca.gov)

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Ms. Heidi Palchik at the above address.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and the Commission order to initiate rulemaking proceedings. Copies may be obtained by contacting Ms. Heidi Palchik at the address or phone number listed above. All persons on the Commission's interested persons mailing list will automatically be sent a copy of the rulemaking file.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, and holding a public hearing, if necessary, the Commission may adopt the proposed regulations substantially as described in this notice. If the Commission makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Commission adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Ms. Heidi Palchik at the address indicated above. The Commission will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Heidi Palchik at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at www.csm.ca.gov.

TITLE 16. CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Department of Consumer Affairs, in the Hearing Room, First Floor, 2005 Evergreen Street, Sacramento, CA 95815 at 10:45 a.m., on July 28, 2010.

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on July 26, 2010, or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the action.

Authority and Reference: Pursuant to the authority vested by section 2570.20 of the Business and Professions Code (BPC), and to implement, interpret or make specific BPC Sections 2570.2 and 2570.3, the Board is proposing to revise Division 39, Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law authorizes the board to establish, by regulation, a system for the issuance of a citation when an applicant to the board or a licensee is in violation of the applicable licensing act or any regulation adopted by the board. Existing regulations allow the Board's executive officer, or his or her designee, to issue citations containing orders of abatement and/or administrative fines against applicants pursuing licensure by the

Board or licensed occupational therapists or occupational therapy assistants who are in violation of the Occupational Therapy Act or any regulation adopted pursuant thereto.

The proposed amendment to CCR Section 4141(a)(1) raises the maximum fine for Class "A" violations, that is, violations of a more serious nature, from \$2,500 to \$5000 in accordance with BPC Section 125.9(b)(3).

The first proposed amendment to CCR Section 4141(a)(2) raises the maximum fine for Class "B" violations, that is, violations of a less serious nature, from \$1,000 to \$2,500. The second proposed amendment clarifies the time period for practicing with an expired license from "91 to 365 days" to practicing "when the license has lapsed for a period of more than three calendar months but less than a one year period."

The proposed amendment to CCR Section 4141(a)(3) raises the maximum fine for Class "C" violations, that is, violations which are minor or technical in nature, from \$500 to \$1001. The second proposed amendment clarifies the time period for practicing with an expired license from "practicing without a current and active license for 90 days" to practicing "when the license has lapsed for a period of three calendar months".

The proposed addition of CCR Section 4144 requires that after a citation has become final, it must be reported to other occupation therapy boards and other regulatory agencies.

Publication of citation disposition by the Board will directly inform and protect the public. Notice of citation disposition may impact the disciplinary activities of these other boards and agencies for licensing and enforcement purposes, thereby indirectly protecting the public.

The proposed addition of CCR Section 4145(a) requires that all final citations are reportable to the public upon request, and (b) establishes a retention schedule for the citations referred to in CCR 4145(a). The proposed addition of CCR 4145(c) creates an exception to the retention schedule established in CCR 4145(b) for citations issued to unlicensed individuals who have used specified titles or initials, fraudulently representing themselves as licensed occupational therapists or occupational therapy assistants.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Non-discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500–176390 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the adoption of this regulation would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination: None

Impact on Jobs/New Businesses:

The Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The agency is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. These amendments only relate to persons issued citations for failure to comply with the laws or regulations established by the board. Any cost impact incurred would directly impact the applicants for licensure or individual occupational therapists or occupational therapy assistants' who have violated the board's laws or regulations.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulation would not impact small businesses because the regulations do not regulate, benefit or harm small businesses and do not require reports or any other compliance activities of small businesses.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would it be as effective as and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

TEXT OF PROPOSAL AND INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of reasons that sets forth the reasons for the proposed action and has all the information upon which the proposal is based.

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing, from our website as listed below, or upon written request from the contact person listed below.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Jim Schenk
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263–2294
(916) 263–2701 (FAX)
cbot@dca.ca.gov

The backup contact person is:

Heather Martin
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263–2294
(916) 263–2701 (FAX)
cbot@dca.ca.gov

Website Access: All materials regarding this proposal can be found on-line at www.bot.ca.gov > **Laws and Regulations > Proposed Regulations.**

TITLE 16. CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Department of Consumer Affairs, in the Hearing Room, First Floor, 2005 Evergreen Street, Sacramento, CA 95815 at 10:45 a.m., on July 28, 2010.

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on July 26, 2010, or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the action.

Authority and Reference: Pursuant to the authority vested by section 2570.20 of the Business and Professions (B&P) Code, and to implement, interpret or make specific B&P Code Sections 2570.2 and 2570.3, the Board is proposing to revise Division 39, Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law, Division 39, Title 16 of the California Code of Regulations (CCR), is subdivided into "Articles" for the purpose of organizing related regulations into categories for easy reference. CCR Section 4144 can be found in "Article 5. Citations". This article includes the Board regulations relating to the issuance of citations to occupational therapists or occupational therapy assistants, or other non-licensees, who, have committed any acts or omissions which are in violation of the Occupational Practice Act or any regulation adopted pursuant thereto.

Existing law, Government Code Section 11500 et seq., sets forth the rules and requirements applicable to an adjudicative proceeding for violations filed for disciplinary purposes. In 2003, the Board adopted "Disci-

plinary Guidelines December 2003" to establish consistency in disciplinary penalties for similar offenses on a statewide basis. Existing law also requires that the Board to consider its own disciplinary guidelines, set forth in "Disciplinary Guidelines December 2003", currently published on the Board's website, in order to reach an appropriate disposition for pending adjudicative proceedings.

The first proposed regulatory change action will:

- Create a new "Article 5.5 Enforcement" located between the final numbered regulations included in "Article 5. Citations" but before "Article 6. Advanced Practices".

The second proposed regulatory amendment will:

- Rename and renumber the current CCR "Section 4144. Disciplinary Guidelines" to "Section 4148. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines". This renamed and renumbered regulation will now be the first regulation included under the proposed "Article 5.5 Enforcement".

The third proposed regulatory amendment to the renamed and renumbered CCR Section 4148 will:

- Add the word "disciplinary" before the word "guidelines" to characterize, clarify and describe the types of guidelines and orders that the Board shall comply with when applying the newly adopted "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines July 2010".
- Clarify the rules that must be complied with in order to reach an appropriate disposition for pending adjudicative proceedings.

The fourth proposed amendment to the renamed and renumbered CCR Section 4148 will:

- Forbid both the Board and administrative law judge from imposing any terms and conditions of probation that are less restrictive than the "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines July 2010".

These proposed regulatory changes will:

- Mandate that the Board comply with the updated and re-named "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines July 2010", which has been adopted and replaces "Disciplinary Guidelines December 2003".
- Mandate that neither the Board nor an administrative law judge deviate from the minimum terms or conditions of probation established by the "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines July 2010".

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Non-discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the adoption of this regulation would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination: None

Impact on Jobs/New Businesses:

The Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

None. These amendments only relate to persons against whom non-citation disciplinary proceedings have been initiated. Any cost impact incurred would relate to the individual occupational therapists or occupational therapy assistants' activities, or other affected persons, concerning opposing or challenging those disciplinary proceedings.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulation would not impact small businesses because the regulations do not regulate, benefit or harm small businesses and do not require reports or any other compliance activities of small businesses.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or less burdensome to affected persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

TEXT OF PROPOSAL AND INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of reasons that sets forth the reasons for the proposed action and has all the information upon which the proposal is based.

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing, from our website as listed below, or upon written request from the contact person listed below.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Jim Schenk
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294
(916) 263-2701 (FAX)
cbot@dca.ca.gov

The backup contact person is:

Heather Martin
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294
(916) 263-2701 (FAX)
cbot@dca.ca.gov

Website Access: All materials regarding this proposal can be found on-line at **www.bot.ca.gov > Laws and Regulations > Proposed Regulations.**

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND GAME

Department of Fish and Game — Public Interest Notice

For Publication June 11, 2010
CESA CONSISTENCY DETERMINATION
REQUEST FOR
Gas Lines 210A & 210B Repair Project
Solano County
2080-2010-017-03

The Department of Fish and Game (Department) received a notice on May 27, 2010 that the Pacific Gas & Electric Company (PG&E) proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act (CESA). This project consists of facility upgrades and valve replacement prior to pipeline inspection in Solano County, California (Project).

Project activities will have adverse temporary effects on 0.2 acre of habitat suitable for the California tiger salamander (*Ambystoma californiense*) and adverse permanent effects on 0.24 acre of habitat suitable for the California tiger salamander. The project could also result in direct mortality, injury, or harassment of individual juvenile and adult California tiger salamanders. The U.S. Fish and Wildlife Service (Service) issued a “no jeopardy” federal programmatic biological opinion (81420-2010-F-0593-1)(BO) and incidental take statement (ITS) to the Army Corps of Engineers (Corps) on May 20, 2010 which considered the effects of the project on the Federally threatened and State candidate California tiger salamander.

On March 3, 2010, the California Fish and Game Commission, the California constitutionally established entity with exclusive statutory authority to designate species as protected under CESA, determined that listing California Tiger Salamander as a threatened species under state law is warranted. (Cal. Const., art. IV, § 20, subd. (b); Fish & G. Code, §§ 2070, 2075.5(2).) Consistent with the Commission’s determination, California Tiger Salamander will be added to the list of species designated as threatened under CESA following the completion of related formal rulemaking by the Commission under the Administrative Procedure Act (Gov. Code, § 11340 et seq.). (See also Fish & G. Code, 2075.5(2); Cal. Code Regs., tit. 14, 670.1, subd. (j), 670.5, subd. (b).) In the interim, California Tiger Salamander will remain a candidate species protected under

CESA. (Fish & G. Code, 2085; Cal. Reg. Notice Register 2009, No. 8Z, p. 284.)

Pursuant to California Fish and Game Code Section 2080.1, PG&E is requesting a determination that the BO and ITS are consistent with CESA for purposes of the proposed Project. If the Department determines the BO and ITS are consistent with CESA for the proposed Project, PG&E will not be required to obtain an incidental take permit under Fish and Game Code section 2081 for the Project.

DEPARTMENT OF FISH AND GAME

Department of Fish and Game — Public Interest Notice

For Publication June 11, 2010
CESA CONSISTENCY DETERMINATION FOR
State Water Project Delta Operations
Multiple Counties
2080-2010-016-00

The Department of Fish and Game (Department) received notice on May 25, 2010, that the California Department of Water Resources (DWR) proposes to rely on consultation between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act (CESA). The project consists of the State Water Project Delta Operations wherein DWR proposed to divert, store and convey State Water Project and Central Valley Project water until the year 2030. Project activities will result in adverse impacts to winter-run Chinook salmon (*Oncorhynchus tshawytscha*) and spring-run Chinook salmon (*Oncorhynchus tshawytscha*).

The National Marine Fisheries Service (NMFS) issued a “jeopardy” federal biological opinion (2008/09022)(BO) and incidental take statement (ITS) to Bureau of Reclamation (Bureau) on June 4, 2009, which considered the effects of the project on the Federally endangered and State endangered winter-run Chinook salmon and Federally threatened and State threatened spring-run Chinook salmon. NMFS provided a reasonable and prudent alternative (RPA) with the BO that is expected to avoid the likelihood of jeopardy of the species. Pursuant to California Fish and Game Code Section 2080.1, DWR is requesting a determination that the BO, with the measures contained in the RPA, and ITS are consistent with the requirements of CESA. If the Department determines that the BO, RPA, and ITS are consistent with CESA for the proposed project, DWR will not be required to obtain a separate permit under Fish and Game Code Section 2081 for the proposed project.

DEPARTMENT OF FISH AND GAME

**CALIFORNIA DEPARTMENT OF
FISH AND GAME
CONSISTENCY DETERMINATION
Fish and Game Code Section 2080.1
Tracking Number 2080-2010-016-00**

PROJECT: California State Water Project Delta Facilities
LOCATION: The California Delta and Central Valley
NOTIFIER: California Department of Water Resources

BACKGROUND

The proposed project (Project) by the Department of Water Resources (DWR) is the continued operation of the State Water Project (SWP) and other water diversion, storage, and transport related actions that are described below and included in the federal *Biological Opinion and Conference Opinion on the Long-Term Operations of the Central Valley Project and State Water Project* (Ref. No. 2008/09022)(BO) issued by the National Marine Fisheries Service (NMFS) for the protection of marine species, including Sacramento River winter-run Chinook salmon and Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*) (Chinook salmon). Chinook salmon are listed species under both the federal ESA (ESA) (16 U.S.C. § 1531 *et seq.*) and the California Endangered Species Act (CESA) (Fish & Game Code, § 2050 *et seq.*). Winter-run Chinook salmon is listed as endangered and spring-run Chinook salmon is listed as threatened under CESA. (Cal. Code Regs. §§ 670.5(a)(2)(M), (b)(2)(D).) Flow changes, loss of habitat, and entrainment and impingement caused by Project-related water export and management activities are known to result in incidental take of Chinook salmon.

On August 5, 2009, Donald Koch, the former Director of the Department of Fish and Game (DFG), received correspondence from Lester A. Snow, former Director of DWR, requesting a determination pursuant to Fish and Game Code section 2080.1 that the BO, including its incidental take statement, is consistent with CESA such that no further authorization is necessary for the Project to take Chinook salmon. (Cal. Reg. Notice Register No. 34-Z (August 21, 2009).) On September 3, 2009, DFG found the BO consistent with CESA for the authorization of take of winter-run Chinook salmon and spring-run Chinook salmon by the SWP. (Cal. Reg. Notice Register No. 38-Z (Sept. 18, 2009).) That determination provided, in pertinent part, that a

new consistency determination request would be required if the RPAs in the BO were amended or replaced.

On May 25, 2010, federal court Judge Oliver Wanger issued a Preliminary Injunction enjoining implementation of two actions in the BO:

1. Action IV.2.1 (the Inflow-Export Ratio of San Joaquin River flow to combined project Export rate), which would constrain SWP and Central Valley Project (CVP) Delta exports during May 26, 2010 through May 31, 2010, primarily to protect emigrating steelhead; and
2. Action IV.2.3 (the Old and Middle River (OMR) 5000 cfs calendar based flow) that may constrain operations until June 15, 2010.

On May 25, 2010, John McCamman, Director of DFG, received correspondence from Mark W. Cowin, Director of DWR, requesting a determination pursuant to Fish and Game Code section 2080.1 that the BO, as enjoined in part by the federal court, including its incidental take statement, is consistent with CESA such that no further authorization from DFG is necessary for Project-related incidental take of Chinook salmon.

The Project consists of the following existing facilities in the Delta: Clifton Court Forebay, John E. Skinner Fish Facility, Harvey O. Banks Pumping Plant (collectively referred to as the Banks Pumping Plant Complex); and the North Bay Aqueduct at Barker Slough (NBA). The Project also includes the following facilities that are operated in coordination with the federal Central Valley Project (CVP): Suisun Marsh Salinity Control Gates, Roaring River Distribution System, Morrow Island Distribution System, Goodyear Slough Outfall, and the South Delta Temporary Barriers Project (TBP). TBP has four rock barriers across south Delta channels (at Middle River near Victoria Canal, Old River near Tracy, Grant Line Canal near Tracy Boulevard Bridge, and the head of Old River near the confluence of Old River and San Joaquin River) that can be installed and removed during the spring and fall.

The Oroville Complex (Oroville Dam and related facilities, including the Feather River Fish Hatchery) is part of the SWP but not part of the Project. DWR's Federal Energy Regulatory Commission (FERC) license for the Oroville Complex expired in 2007. Until a FERC license is issued, DWR will operate the Oroville Complex consistent with the existing FERC license. FERC is currently in consultation with NMFS regarding the effects of relicensing the Oroville Complex for 50 years. Because the effects of the Oroville Complex are considered in a separate and ongoing NMFS consultation, the effects of operation of Oroville Dam on federally listed fish within the Feather River were not considered as part of the BO consultation and thus are not part of the Project. However, the effects of the flows

from the Oroville Complex on all listed fish under NMFS jurisdiction in the Sacramento River and Delta were considered in the BO.

The SWP is operated to provide flood control and water for agricultural, municipal, industrial, recreational, and environmental purposes. Water conserved in, and released from, Oroville Reservoir, together with Sacramento–San Joaquin flows, serves three contractors in the Feather River area, two contractors via the NBA, and the remaining 24 contractors in the SWP service areas south of the Delta with deliveries from the Harvey O. Banks Pumping Plant in the south Delta. California State Water Resources Control Board (SWRCB) permits allow SWP facilities to divert water in the Delta and re-divert water that is stored in upstream reservoirs. The U.S. Bureau of Reclamation (USBR) and DWR coordinate the operations of the CVP and SWP to meet water quality, quantity, and operational criteria in the Delta set by the SWRCB and to meet ESA requirements for delta smelt, winter and spring–run Chinook salmon, steelhead and green sturgeon.

Because the proposed Project has the potential to take ESA-listed species, the USBR, on behalf of itself and DWR, entered into consultation with NMFS pursuant to ESA Section 7. On June 4, 2009, NMFS transmitted the BO to USBR. The BO describes CVP/SWP operations, including the Project, and sets forth conservation measures to minimize impacts to Chinook salmon and their habitat, and to mitigate the impacts which remain after minimization. The BO includes a “Reasonable and Prudent Alternative” (RPA), and the USBR and DWR must implement and adhere to the RPA as required by the BO and its related ITS. BO section 11.2 details the RPA actions by Central Valley geographic areas. Those areas are the Sacramento River, American River, East Side (Stanislaus River), and the Delta. BO section 11.3 provides a species-by-species explanation of: (1) how each measure contributes to avoiding jeopardy or adverse modification of designated critical habitat for that species; and (2) the basis for NMFS’ conclusion that the RPA measures as a whole are likely to avoid jeopardizing the species or adversely modifying its critical habitat. A detailed description of the adaptive process, its framework, and the rationale for each of the RPA components are presented in the context of the full BO.

DETERMINATION

DFG has determined that the BO, including all RPA requirements, excluding RPAs enjoined by the Preliminary Injunction through June 15, 2010, and related incidental take statement, is consistent with CESA because

the mitigation measures therein meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for DFG to authorize incidental take of CESA listed species. This determination is limited to only those actions specifically identified and analyzed in the June 4, 2009 BO.

Specifically, DFG finds that Project-related take of Chinook salmon will be incidental to an otherwise lawful activity (i.e., SWP operations) and that the measures and RPA actions identified in the BO, excluding RPAs enjoined by the Preliminary Injunction through June 15, 2010, to modify flow requirements, control water temperatures, improve passage and access to spawning areas, and restore habitat will minimize and fully mitigate the impacts of the authorized take of Chinook salmon. Furthermore, DFG finds that the Project, with the prescribed measures and RPAs, excluding RPAs enjoined by the Preliminary Injunction through June 15, 2010, will not jeopardize the continued existence of the species. The avoidance, minimization, and mitigation measures in the BO include, but are not limited to, the following:

Avoidance, Minimization and Mitigation Measures

• Near-term Actions:

- To ensure cooler water temperatures that will improve productivity and survival of Chinook salmon, DWR and USBR shall implement new flow management programs in the upper Sacramento River, Clear Creek, American River, Stanislaus River and the reservoirs that control the river.
- To improve passage to upstream habitat areas, DWR shall coordinate with USBR on the Red Bluff Diversion Dam gate operations, construction and operation of an alternative pumping plant to supply water to existing users, and by 2012, have the gates open year-round,
- To improve spawning and rearing habitat for Chinook salmon in the Sacramento River basin and Delta, DWR in conjunction with USBR and other agencies shall implement habitat enhancement actions. These actions specifically include ongoing DWR restoration activities in the Yolo Bypass including Liberty Island and the Cache Slough Complex.
- To benefit existing Central Valley spring–run Chinook salmon and to establish a second population of Sacramento River winter–run Chinook salmon, DWR and USBR shall

provide for restoration of habitat on Battle Creek.

- To improve juvenile and adult survival for Chinook salmon passing through the Delta and provide for increased aquatic habitat during critical times, DWR and USBR shall:
 - Implement water control gate closures during key times when Chinook salmon are likely to be migrating through the area and implement pumping flow modifications to reduce the number of juveniles vulnerable to entrainment at the water export facilities.
 - Facilitate improvements to the fish screening and salvage operations at the Harvey O. Banks Water Pumping Facility to reduce mortality from entrainment and salvage.
 - Initiate operational changes to reduce negative flows toward the export pumps in Old and Middle rivers to reduce likelihood that Chinook salmon will be diverted from the San Joaquin or Sacramento River into the southern or central Delta.
 - Support activities to increase San Joaquin River flows.
 - Curtail water export based on technical team recommendations.
- To ensure preservation of important habitat areas for Chinook salmon, DWR shall not implement the South Delta Barrier Improvement Program.
- **Long-term Actions:**
 - DWR and USBR shall implement long-term passage evaluations at Shasta, Folsom, and New Melones Dams to allow re-introduction of Chinook salmon to desirable habitat above the rim-dams. These actions may include increased flow requirements, fixes to control structures, pulse flows for fish attraction or channel maintenance, or changes in the operation of those control structures.
 - DWR and USBR shall implement monitoring actions and new studies of juvenile fish in the San Joaquin and Sacramento Basins to evaluate the effectiveness of the RPA and adaptively manage/refine actions over the life of the project.
 - DWR and USBR shall establish a technical review group to assist in: determining necessary “real-time” operational measures,

evaluating effectiveness of actions, and modifying measures when necessary.

- **Reporting and Monitoring Actions:** Conditions of the BO and RPAs require DWR to develop and follow specific monitoring programs to achieve the RPA objectives. Participation, including by DFG, in review and reporting requirements for these processes are all a condition of, and detailed within, the BO and RPAs. The BO describes a monitoring and reporting process for specific actions set forth within RPA “Action Suites” for the design, monitoring, and adaptive management of those actions required to improve Chinook salmon survival and habitat. Monitoring and reporting requirements are described in detail in Section 11.2.1.3 of the BO.
- **Ensured Funding:** All SWP operational actions are a conditional requirement of the BO RPAs. Funding for certain required actions has been allocated through bonds or has been identified in allocations from the American Recovery and Reinvestment Act of 2009. Additionally, DWR has the statutory authority to require reimbursement in the SWP contracts for water and power for any costs DWR incurs for SWP-related fish and wildlife preservation (See Wat. Code §§ 12937, 12938).

Based on this consistency determination, DWR does not need to obtain authorization from DFG under CESA for incidental take of Sacramento River winter-run Chinook salmon and Central Valley spring-run Chinook salmon that occurs in carrying out the Project, provided DWR implements the Project as described in the BO, and complies with the measures and RPAs, excluding RPAs enjoined by the Preliminary Injunction through June 15, 2010, and other conditions described in the BO. The suspension of RPA IV.2.1 and the calendar portion of RPA IV.2.3 through June 15, 2010, does not impact DFG’s ability to find consistency with the BO given the biological support for the suspension’s minimal impact to winter and spring-run Chinook and the short duration of the suspension. Specifically, DFG considered that RPA IV.2.1 primarily benefits steelhead, and its suspension for 5 days will not adversely affect winter or spring-run Chinook salmon. DFG also considered that the calendar portion of RPA IV.2.3 will not adversely affect winter or spring-run Chinook because current data indicates winter-run Chinook completed their outmigration and spring-run Chinook outmigration is close to completion. In addition, the annual take limits for winter and spring-run Chinook specified in the BO have not been met.

If the Project as described in the BO, excluding RPAs enjoined by the Preliminary Injunction through June

15, 2010, including the mitigation measures therein, changes after the date of the BO, or if the NMFS amends or replaces the BO or any of the RPAs, or there are further changes to the BO as a result of litigation, DWR will need to obtain from DFG a new consistency determination (in accordance with Fish and Game Code section 2080.1) or a separate incidental take permit (in accordance with Fish and Game Code section 2081, subd. (b).) This determination replaces DFG's prior determination (Ref. #2080-2009-011-00) issued on November 3, 2009.

DEPARTMENT OF FISH AND GAME

Department of Fish and Game — Public Interest Notice

For Publication June 11, 2010
CESA CONSISTENCY DETERMINATION
REQUEST FOR
Stream Maintenance Program
Sonoma County
2080-2010-015-03

The Department of Fish and Game (Department) received a notice on May 25, 2010 that the Sonoma County Water Agency (SCWA) proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act (CESA). This project, a stream maintenance program, consists of flood control operations including routine sediment removal, vegetation management, and bank stabilization activities in Sonoma County, California (Project). Project activities will have adverse effects on 7.75 acres of California tiger salamanders (*Ambystoma californiense*) over a ten year period.

The U.S. Fish and Wildlife Service (Service) issued a "no jeopardy" federal programmatic biological opinion (81420-2009-F-0788-1)(BO) and incidental take statement (ITS) to the Army Corps of Engineers (Corps) on October 29, 2009 which considered the effects of the project on the Federally threatened and State candidate California tiger salamander.

On March 3, 2010, the California Fish and Game Commission, the California constitutionally established entity with exclusive statutory authority to designate species as protected under CESA, determined that listing CTS as a threatened species under state law is warranted. (Cal. Const., art. IV, § 20, subd. (b); Fish & G. Code, §§ 2070, 2075.5(2)) Consistent with the Commission's determination, California Tiger Salamander will be added to the list of species designated as threatened under CESA following the completion of related formal rulemaking by the Commission under the Administrative Procedure Act (Gov. Code, § 11340 et

seq.). (See also Fish & G. Code, 2075.5(2); Cal. Code Regs., tit. 14, 670.1, subd. (j), 670.5, subd. (b).) In the interim, California Tiger Salamander will remain a candidate species protected under CESA. (Fish & G. Code, 2085; Cal. Reg. Notice Register 2009, No. 8-Z, p. 284.)

Pursuant to California Fish and Game Code Section 2080.1, SCWA is requesting a determination that the BO and ITS are consistent with CESA for purposes of the proposed Project. If the Department determines the BO and ITS are consistent with CESA for the proposed Project, SCWA will not be required to obtain an incidental take permit under Fish and Game Code section 2081 for the Project.

DEPARTMENT OF FISH AND GAME

Public Interest Notice for Publication
on June 11, 2010

PROPOSED RESEARCH ON A
FULLY-PROTECTED SPECIES:
Taking the Salt-Marsh Harvest Mouse

The Department of Fish and Game (Department) is evaluating a proposal received from Kathryn M. Allan, MS, San Francisco, California, on January 11, 2010, for authorization to take the salt-marsh harvest mouse (*Reithrodontomys raviventris*) (mouse) for research purposes consistent with the conservation and recovery of the species. The mouse is a Fully Protected species of mammal. The proposed activity consists of capturing, or attempting to capture, the mouse, using live-traps, to determine the distribution and status of local populations.

For the purpose of allowing take of mammals which are native to California, the Department would require that Ms. Allan and each person she supervises during field work on the mouse obtain a State scientific collecting permit (SCP) to take mammals prior to beginning work. SCP conditions require that the holder of this permit obtain additional, special authorization from the Department for research on Fully Protected species. The Department would provide the special authorization for taking the mouse to Ms. Allan through specific written conditions in a Memorandum of Understanding or other type of special permit.

Pursuant to California Fish and Game Code (FGC) Section 4700(a)(1), the Department may authorize take of a Fully Protected species of mammal after a notice of 30 days has been provided to affected and interested parties through publication of a notice in the California Regulatory Notice Register. If the Department determines that the research proposed by Ms. Allan is consistent with the requirements of FGC Section 4700 for take of Fully Protected mammals, the Department would issue the authorization on or after July 11, 2010, for an initial term not to exceed five years. For further in-

formation, contact Dr. Scott Osborn, Wildlife Branch, Department of Fish and Game, 1812 Ninth Street, Sacramento, California 95811, telephone (916) 324-3564.

CHEMICALS KNOWN TO THE STATE
TO CAUSE CANCER OR
REPRODUCTIVE TOXICITY
June 11, 2010

PROPOSITION 65

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT
SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986

The Safe Drinking Water and Toxic Enforcement Act of 1986 requires that the Governor revise and republish at least once per year the list of chemicals known to the State to cause cancer or reproductive toxicity. The identification number indicated in the following list is the Chemical Abstracts Service (CAS) Registry Number. No CAS number is given when several substances are presented as a single listing. The date refers to the initial appearance of the chemical on the list. For easy reference, chemicals which are shown underlined are newly added. Chemicals which are shown with a strikeout were placed on the list with the date noted, and have subsequently been removed.

CHEMICALS KNOWN TO THE STATE TO CAUSE CANCER

<u>Chemical</u>	<u>CAS Number</u>	<u>Date</u>
A-alpha-C (2-Amino-9H-pyrido[2,3-b]indole)	26148-68-5	January 1, 1990
Acetaldehyde	75-07-0	April 1, 1988
Acetamide	60-35-5	January 1, 1990
Acetochlor	34256-82-1	January 1, 1989
2-Acetylaminofluorene	53-96-3	July 1, 1987
Acifluorfen sodium	62476-59-9	January 1, 1990
Acrylamide	79-06-1	January 1, 1990
Acrylonitrile	107-13-1	July 1, 1987
Actinomycin D	50-76-0	October 1, 1989
AF-2;[2-(2-furyl)-3-(5-nitro-2-furyl)]acrylamide	3688-53-7	July 1, 1987
Aflatoxins	—	January 1, 1988
Alachlor	15972-60-8	January 1, 1989
Alcoholic beverages, when associated with alcohol abuse	—	July 1, 1988
Aldrin	309-00-2	July 1, 1988
<u>Allylchloride Delisted October 29, 1999</u>	107-05-1	January 1, 1990
2-Aminoanthraquinone	117-79-3	October 1, 1989
p-Aminoazobenzene	60-09-3	January 1, 1990
ortho-Aminoazotoluene	97-56-3	July 1, 1987
4-Aminobiphenyl (4-aminodiphenyl)	92-67-1	February 27, 1987
1-Amino-2,4-dibromoanthraquinone	81-49-2	August 26, 1997
3-Amino-9-ethylcarbazole hydrochloride	6109-97-3	July 1, 1989
2-Aminofluorene	153-78-6	January 29, 1999
1-Amino-2-methylantraquinone	82-28-0	October 1, 1989
2-Amino-5-(5-nitro-2-furyl)-1,3,4-thiadiazole	712-68-5	July 1, 1987
4-Amino-2-nitrophenol	119-34-6	January 29, 1999
Amitrole	61-82-5	July 1, 1987
Amsacrine	51264-14-3	August 7, 2009
Analgesic mixtures containing phenacetin	—	February 27, 1987
Aniline	62-53-3	January 1, 1990
Aniline hydrochloride	142-04-1	May 15, 1998
ortho-Anisidine	90-04-0	July 1, 1987

<i>Chemical</i>	<i>CAS Number</i>	<i>Date</i>
ortho-Anisidine hydrochloride	134-29-2	July 1, 1987
Antimony oxide (Antimony trioxide)	1309-64-4	October 1, 1990
Anthraquinone	84-65-1	September 28, 2007
Aramite	140-57-8	July 1, 1987
Areca nut	—	February 3, 2006
Aristolochic acids	—	July 9, 2004
Arsenic (inorganic arsenic compounds)	—	February 27, 1987
Asbestos	1332-21-4	February 27, 1987
Auramine	492-80-8	July 1, 1987
Azacitidine	320-67-2	January 1, 1992
Azaserine	115-02-6	July 1, 1987
Azathioprine	446-86-6	February 27, 1987
Azobenzene	103-33-3	January 1, 1990
Benthiavalicarb-isopropyl	177406-68-7	July 1, 2008
Benz[a]anthracene	56-55-3	July 1, 1987
Benzene	71-43-2	February 27, 1987
Benzidine [and its salts]	92-87-5	February 27, 1987
Benzidine-based dyes	—	October 1, 1992
Benzo[b]fluoranthene	205-99-2	July 1, 1987
Benzo[j]fluoranthene	205-82-3	July 1, 1987
Benzo[k]fluoranthene	207-08-9	July 1, 1987
Benzofuran	271-89-6	October 1, 1990
Benzo[a]pyrene	50-32-8	July 1, 1987
Benzotrichloride	98-07-7	July 1, 1987
Benzyl chloride	100-44-7	January 1, 1990
Benzyl violet 4B	1694-09-3	July 1, 1987
Beryllium and beryllium compounds	—	October 1, 1987
Betel quid with tobacco	—	January 1, 1990
Betel quid without tobacco	—	February 3, 2006
2,2-Bis(bromomethyl)-1,3-propanediol	3296-90-0	May 1, 1996
Bis(2-chloroethyl)ether	111-44-4	April 1, 1988
N,N-Bis(2-chloroethyl)-2-naphthylamine (Chlornapazine)	494-03-1	February 27, 1987
Bischloroethyl nitrosourea (BCNU) (Carmustine)	154-93-8	July 1, 1987
Bis(chloromethyl)ether	542-88-1	February 27, 1987
Bis(2-chloro-1-methylethyl) ether, technical grade	—	October 29, 1999
Bitumens, extracts of steam-refined and air refined	—	January 1, 1990
Bracken fern	—	January 1, 1990
Bromate	15541-45-4	May 31, 2002
Bromochloroacetic acid	5589-96-8	April 6, 2010
Bromodichloromethane	75-27-4	January 1, 1990
Bromoethane	74-96-4	December 22, 2000
Bromoform	75-25-2	April 1, 1991
1,3-Butadiene	106-99-0	April 1, 1988
1,4-Butanediol dimethanesulfonate (Busulfan)	55-98-1	February 27, 1987
Butylated hydroxyanisole	25013-16-5	January 1, 1990
beta-Butyrolactone	3068-88-0	July 1, 1987
Cacodylic acid	75-60-5	May 1, 1996
Cadmium and cadmium compounds	—	October 1, 1987
Caffeic acid	331-39-5	October 1, 1994
Captan	2425-06-1	October 1, 1988
Captan	133-06-2	January 1, 1990
Carbaryl	63-25-2	February 5, 2010
Carbazole	86-74-8	May 1, 1996

<i><u>Chemical</u></i>	<i><u>CASNumber</u></i>	<i><u>Date</u></i>
Carbon black (airborne, unbound particles of respirable size)	1333-86-4	February 21, 2003
Carbon tetrachloride	56-23-5	October 1, 1987
Carbon-black extracts	—	January 1, 1990
N-Carboxymethyl-N-nitrosourea	60391-92-6	January 25, 2002
Catechol	120-80-9	July 15, 2003
Ceramic fibers (airborne particles of respirable size)	—	July 1, 1990
Certain combined chemotherapy for lymphomas	—	February 27, 1987
Chlorambucil	305-03-3	February 27, 1987
Chloramphenicol	56-75-7	October 1, 1989
Chlordane	57-74-9	July 1, 1988
Chlordecone (Kepone)	143-50-0	January 1, 1988
Chlordimeform	6164-98-3	January 1, 1989
Chlorendic acid	115-28-6	July 1, 1989
Chlorinated paraffins (Average chain length, C12; approximately 60 percent chlorine by weight)	108171-26-2	July 1, 1989
p-Chloroaniline	106-47-8	October 1, 1994
p-Chloroaniline hydrochloride	20265-96-7	May 15, 1998
Chlorodibromomethane <u>Delisted October 29, 1999</u>	124-48-1	January 1, 1990
Chloroethane (Ethyl chloride)	75-00-3	July 1, 1990
1-(2-Chloroethyl)-3-cyclohexyl-1-nitrosourea (CCNU)	13010-47-4	January 1, 1988
(Lomustine)		
1-(2-Chloroethyl)-3-(4-methylcyclohexyl)-1-nitrosourea (Methyl-CCNU)	13909-09-6	October 1, 1988
Chloroform	67-66-3	October 1, 1987
Chloromethyl methyl ether (technical grade)	107-30-2	February 27, 1987
3-Chloro-2-methylpropene	563-47-3	July 1, 1989
1-Chloro-4-nitrobenzene	100-00-5	October 29, 1999
4-Chloro-ortho-phenylenediamine	95-83-0	January 1, 1988
p-Chloro-o-toluidine	95-69-2	January 1, 1990
p-Chloro-o-toluidine, strong acid salts of	—	May 15, 1998
5-Chloro-o-toluidine and its strong acid salts	—	October 24, 1997
Chloroprene	126-99-8	June 2, 2000
Chlorothalonil	1897-45-6	January 1, 1989
Chlorotrianisene	569-57-3	September 1, 1996
Chlorozotocin	54749-90-5	January 1, 1992
Chromium (hexavalent compounds)	—	February 27, 1987
Chrysene	218-01-9	January 1, 1990
C.I. Acid Red 114	6459-94-5	July 1, 1992
C.I. Basic Red 9 monohydrochloride	569-61-9	July 1, 1989
C.I. Direct Blue 15	2429-74-5	August 26, 1997
C.I. Direct Blue 218	28407-37-6	August 26, 1997
C.I. Solvent Yellow 14	842-07-9	May 15, 1998
Ciclosporin (Cyclosporin A; Cyclosporine)	59865-13-3	January 1, 1992
	79217-60-0	
Cidofovir	113852-37-2	January 29, 1999
Cinnamyl anthranilate	87-29-6	July 1, 1989
Cisplatin	15663-27-1	October 1, 1988
Citrus Red No. 2	6358-53-8	October 1, 1989
Clofibrate	637-07-0	September 1, 1996
Cobalt metal powder	7440-48-4	July 1, 1992
Cobalt [II] oxide	1307-96-6	July 1, 1992
Cobalt sulfate	10124-43-3	May 20, 2005
Cobalt sulfate heptahydrate	10026-24-1	June 2, 2000

<u>Chemical</u>	<u>CAS Number</u>	<u>Date</u>
Coke oven emissions	—	February 27, 1987
Conjugated estrogens	—	February 27, 1987
Creosotes	—	October 1, 1988
para-Cresidine	120-71-8	January 1, 1988
Cumene	98-82-8	April 6, 2010
Cupferron	135-20-6	January 1, 1988
Cycasin	14901-08-7	January 1, 1988
Cyclophosphamide (anhydrous)	50-18-0	February 27, 1987
Cyclophosphamide (hydrated)	6055-19-2	February 27, 1987
Cytembena	21739-91-3	May 15, 1998
D&C Orange No. 17	3468-63-1	July 1, 1990
D&C Red No. 8	2092-56-0	October 1, 1990
D&C Red No. 9	5160-02-1	July 1, 1990
D&C Red No. 19	81-88-9	July 1, 1990
Dacarbazine	4342-03-4	January 1, 1988
Daminozide	1596-84-5	January 1, 1990
Dantron (Chrysazin; 1,8-Dihydroxyanthraquinone)	117-10-2	January 1, 1992
Daunomycin	20830-81-3	January 1, 1988
DDD (Dichlorodiphenyldichloroethane)	72-54-8	January 1, 1989
DDE (Dichlorodiphenyldichloroethylene)	72-55-9	January 1, 1989
DDT (Dichlorodiphenyltrichloroethane)	50-29-3	October 1, 1987
DDVP (Dichlorvos)	62-73-7	January 1, 1989
N,N'-Diacetylbenzidine	613-35-4	October 1, 1989
2,4-Diaminoanisole	615-05-4	October 1, 1990
2,4-Diaminoanisole sulfate	39156-41-7	January 1, 1988
4,4'-Diaminodiphenyl ether (4,4'-Oxydianiline)	101-80-4	January 1, 1988
2,4-Diaminotoluene	95-80-7	January 1, 1988
Diaminotoluene (mixed)	—	January 1, 1990
Diazoaminobenzene	136-35-6	May 20, 2005
Dibenz[a,h]acridine	226-36-8	January 1, 1988
Dibenz[a,j]acridine	224-42-0	January 1, 1988
Dibenz[a,h]anthracene	53-70-3	January 1, 1988
7H-Dibenzo[c,g]carbazole	194-59-2	January 1, 1988
Dibenzo[a,e]pyrene	192-65-4	January 1, 1988
Dibenzo[a,h]pyrene	189-64-0	January 1, 1988
Dibenzo[a,i]pyrene	189-55-9	January 1, 1988
Dibenzo[a,l]pyrene	191-30-0	January 1, 1988
Dibromoacetic acid	631-64-1	June 17, 2008
1,2-Dibromo-3-chloropropane (DBCP)	96-12-8	July 1, 1987
2,3-Dibromo-1-propanol	96-13-9	October 1, 1994
Dichloroacetic acid	79-43-6	May 1, 1996
p-Dichlorobenzene	106-46-7	January 1, 1989
3,3'-Dichlorobenzidine	91-94-1	October 1, 1987
3,3'-Dichlorobenzidine dihydrochloride	612-83-9	May 15, 1998
1,4-Dichloro-2-butene	764-41-0	January 1, 1990
3,3'-Dichloro-4,4'-diaminodiphenyl ether	28434-86-8	January 1, 1988
1,1-Dichloroethane	75-34-3	January 1, 1990
Dichloromethane (Methylene chloride)	75-09-2	April 1, 1988
1,2-Dichloropropane	78-87-5	January 1, 1990
1,3-Dichloropropene	542-75-6	January 1, 1989
Diclofop-methyl	51338-27-3	April 6, 2010
Dieldrin	60-57-1	July 1, 1988
Dienestrol	84-17-3	January 1, 1990

<u>Chemical</u>	<u>CASNumber</u>	<u>Date</u>
Diepoxybutane	1464-53-5	January 1, 1988
Diesel engine exhaust	—	October 1, 1990
Di(2-ethylhexyl)phthalate	117-81-7	January 1, 1988
1,2-Diethylhydrazine	1615-80-1	January 1, 1988
Diethyl sulfate	64-67-5	January 1, 1988
Diethylstilbestrol (DES)	56-53-1	February 27, 1987
Diglycidyl resorcinol ether (DGRE)	101-90-6	July 1, 1989
Dihydrosafrole	94-58-6	January 1, 1988
Diisopropyl sulfate	2973-10-6	April 1, 1993
3,3'-Dimethoxybenzidine (ortho-Dianisidine)	119-90-4	January 1, 1988
3,3'-Dimethoxybenzidine dihydrochloride (ortho-Dianisidine dihydrochloride)	20325-40-0	October 1, 1990
3,3'-Dimethoxybenzidine-based dyes metabolized to 3,3'-dimethoxybenzidine	—	June 11, 2004
3,3'-Dimethylbenzidine-based dyes metabolized to 3,3'-dimethylbenzidine	—	June 11, 2004
Dimethyl sulfate	77-78-1	January 1, 1988
4-Dimethylaminoazobenzene	60-11-7	January 1, 1988
trans-2-[(Dimethylamino)methylimino]-5-[2-(5-nitro-2-furyl)vinyl]-1,3,4-oxadiazole	55738-54-0	January 1, 1988
7,12-Dimethylbenz(a)anthracene	57-97-6	January 1, 1990
3,3'-Dimethylbenzidine (ortho-Tolidine)	119-93-7	January 1, 1988
3,3'-Dimethylbenzidine dihydrochloride	612-82-8	April 1, 1992
Dimethylcarbamoyl chloride	79-44-7	January 1, 1988
1,1-Dimethylhydrazine (UDMH)	57-14-7	October 1, 1989
1,2-Dimethylhydrazine	540-73-8	January 1, 1988
Dimethylvinylchloride	513-37-1	July 1, 1989
3,7-Dinitrofluoranthene	105735-71-5	August 26, 1997
3,9-Dinitrofluoranthene	22506-53-2	August 26, 1997
1,6-Dinitropyrene	42397-64-8	October 1, 1990
1,8-Dinitropyrene	42397-65-9	October 1, 1990
Dinitrotoluene mixture, 2,4-/2,6-	—	May 1, 1996
2,4-Dinitrotoluene	121-14-2	July 1, 1988
2,6-Dinitrotoluene	606-20-2	July 1, 1995
Di-n-propyl isocinchomeronate (MGK Repellent 326)	136-45-8	May 1, 1996
1,4-Dioxane	123-91-1	January 1, 1988
Diphenylhydantoin (Phenytoin)	57-41-0	January 1, 1988
Diphenylhydantoin (Phenytoin), sodium salt	630-93-3	January 1, 1988
Direct Black 38 (technical grade)	1937-37-7	January 1, 1988
Direct Blue 6 (technical grade)	2602-46-2	January 1, 1988
Direct Brown 95 (technical grade)	16071-86-6	October 1, 1988
Disperse Blue 1	2475-45-8	October 1, 1990
Diuron	330-54-1	May 31, 2002
Doxorubicin hydrochloride (Adriamycin)	25316-40-9	July 1, 1987
Epichlorohydrin	106-89-8	October 1, 1987
Erionite	12510-42-8/ 66733-21-9	October 1, 1988
Estradiol 17B	50-28-2	January 1, 1988
Estragole	140-67-0	October 29, 1999
Estrogens, steroidal	—	August 19, 2005
Estrone	53-16-7	January 1, 1988
Estropipate	7280-37-7	August 26, 1997
Ethinylestradiol	57-63-6	January 1, 1988

<i>Chemical</i>	<i>CAS Number</i>	<i>Date</i>
Ethoprop	13194-48-4	February 27, 2001
Ethyl acrylate	140-88-5	July 1, 1989
Ethylbenzene	100-41-4	June 11, 2004
Ethyl methanesulfonate	62-50-0	January 1, 1988
Ethyl-4,4'-dichlorobenzilate	510-15-6	January 1, 1990
Ethylene dibromide	106-93-4	July 1, 1987
Ethylene dichloride (1,2-Dichloroethane)	107-06-2	October 1, 1987
Ethylene oxide	75-21-8	July 1, 1987
Ethylene thiourea	96-45-7	January 1, 1988
Ethyleneimine	151-56-4	January 1, 1988
Fenoxycarb	72490-01-8	June 2, 2000
Folpet	133-07-3	January 1, 1989
Formaldehyde (gas)	50-00-0	January 1, 1988
2-(2-Formylhydrazino)-4-(5-nitro-2-furyl)thiazole	3570-75-0	January 1, 1988
FumonisinB ₁	116355-83-0	November 14, 2003
Furan	110-00-9	October 1, 1993
Furazolidone	67-45-8	January 1, 1990
Furmecyclox	60568-05-0	January 1, 1990
Fusarin C	79748-81-5	July 1, 1995
Gallium arsenide	1303-00-0	August 1, 2008
Ganciclovir	82410-32-0	August 26, 1997
Gasoline engine exhaust (condensates/extracts)	—	October 1, 1990
Gemfibrozil	25812-30-0	December 22, 2000
Glasswool fibers (airborne particles of respirable size)	—	July 1, 1990
Glu-P-1 (2-Amino-6-methyldipyrdo[1,2-a:3',2'-d]imidazole)	67730-11-4	January 1, 1990
Glu-P-2 (2-Aminodipyrdo[1,2-a:3',2'-d]imidazole)	67730-10-3	January 1, 1990
Glycidaldehyde	765-34-4	January 1, 1988
Glycidol	556-52-5	July 1, 1990
Griseofulvin	126-07-8	January 1, 1990
Gyromitrin (Acetaldehyde methylformylhydrazone)	16568-02-8	January 1, 1988
HC Blue 1	2784-94-3	July 1, 1989
Heptachlor	76-44-8	July 1, 1988
Heptachlor epoxide	1024-57-3	July 1, 1988
Herbal remedies containing plant species of the genus Aristolochia	—	July 9, 2004
Hexachlorobenzene	118-74-1	October 1, 1987
Hexachlorocyclohexane (technical grade)	—	October 1, 1987
Hexachlorodibenzodioxin	34465-46-8	April 1, 1988
Hexachloroethane	67-72-1	July 1, 1990
2,4-Hexadienal (89% trans, trans isomer; 11% cis, trans isomer)	—	March 4, 2005
Hexamethylphosphoramide	680-31-9	January 1, 1988
Hydrazine	302-01-2	January 1, 1988
Hydrazine sulfate	10034-93-2	January 1, 1988
Hydrazobenzene (1,2-Diphenylhydrazine)	122-66-7	January 1, 1988
1-Hydroxyanthraquinone	129-43-1	May 27, 2005
Indeno [1,2,3-cd]pyrene	193-39-5	January 1, 1988
Indium phosphide	22398-80-7	February 27, 2001
IQ (2-Amino-3-methylimidazo[4,5-f]quinoline)	76180-96-6	April 1, 1990
Iprodione	36734-19-7	May 1, 1996
Iprovalicarb	140923-17-7	June 1, 2007
	140923-25-7	
Iron dextran complex	9004-66-4	January 1, 1988
Isobutyl nitrite	542-56-3	May 1, 1996

<u>Chemical</u>	<u>CASNumber</u>	<u>Date</u>
Isoprene	78-79-5	May 1, 1996
Isosafrole <u>Delisted December 8, 2006</u>	120-58-1	October 1, 1989
Isoxaflutole	141112-29-0	December 22, 2000
Lactofen	77501-63-4	January 1, 1989
Lasiocarpine	303-34-4	April 1, 1988
Lead acetate	301-04-2	January 1, 1988
Lead and lead compounds	—	October 1, 1992
Lead phosphate	7446-27-7	April 1, 1988
Lead subacetate	1335-32-6	October 1, 1989
Lindane and other hexachlorocyclohexane isomers	—	October 1, 1989
Lynestrenol	52-76-6	February 27, 2001
Mancozeb	8018-01-7	January 1, 1990
Maneb	12427-38-2	January 1, 1990
Marijuana smoke	—	June 19, 2009
Me- α -C (2-Amino-3-methyl-9H-pyrido[2,3-b]indole)	68006-83-7	January 1, 1990
Medroxyprogesterone acetate	71-58-9	January 1, 1990
MeIQ(2-Amino-3,4-dimethylimidazo[4,5-f]quinoline)	77094-11-2	October 1, 1994
MeIQx(2-Amino-3,8-dimethylimidazo[4,5-f]quinoxaline)	77500-04-0	October 1, 1994
Melphalan	148-82-3	February 27, 1987
Mepanipyridin	110235-47-7	July 1, 2008
Merphalan	531-76-0	April 1, 1988
Mestranol	72-33-3	April 1, 1988
Metham sodium	137-42-8	November 6, 1998
8-Methoxypsoralen with ultraviolet A therapy	298-81-7	February 27, 1987
5-Methoxypsoralen with ultraviolet A therapy	484-20-8	October 1, 1988
2-Methylaziridine (Propyleneimine)	75-55-8	January 1, 1988
Methylazoxymethanol	590-96-5	April 1, 1988
Methylazoxymethanol acetate	592-62-1	April 1, 1988
Methyl carbamate	598-55-0	May 15, 1998
3-Methylcholanthrene	56-49-5	January 1, 1990
5-Methylchrysene	3697-24-3	April 1, 1988
4,4' -Methylene bis(2-chloroaniline)	101-14-4	July 1, 1987
4,4' -Methylene bis(N,N-dimethyl)benzenamine	101-61-1	October 1, 1989
4,4' -Methylene bis(2-methylaniline)	838-88-0	April 1, 1988
4,4' -Methylenedianiline	101-77-9	January 1, 1988
4,4' -Methylenedianiline dihydrochloride	13552-44-8	January 1, 1988
Methyleugenol	93-15-2	November 16, 2001
Methylhydrazine and its salts	—	July 1, 1992
Methyl iodide	74-88-4	April 1, 1988
Methylmercury compounds	—	May 1, 1996
Methyl methanesulfonate	66-27-3	April 1, 1988
2-Methyl-1-nitroanthraquinone (of uncertain purity)	129-15-7	April 1, 1988
N-Methyl-N' -nitro-N-nitrosoguanidine	70-25-7	April 1, 1988
N-Methylolacrylamide	924-42-5	July 1, 1990
Methylthiouracil	56-04-2	October 1, 1989
Metiram	9006-42-2	January 1, 1990
Metronidazole	443-48-1	January 1, 1988
Michler's ketone	90-94-8	January 1, 1988
Mirex	2385-85-5	January 1, 1988
Mitomycin C	50-07-7	April 1, 1988
Monocrotaline	315-22-0	April 1, 1988
5-(Morpholinomethyl)-3-[(5-nitro-furfurylidene)-amino]-2-oxazolidinone	139-91-3	April 1, 1988

<i>Chemical</i>	<i>CAS Number</i>	<i>Date</i>
Mustard Gas	505-60-2	February 27, 1987
MX (3-chloro-4-(dichloromethyl)-5-hydroxy-2(5H)-furanone)	77439-76-0	December 22, 2000
Nafenopin	3771-19-5	April 1, 1988
Nalidixic acid	389-08-2	May 15, 1998
Naphthalene	91-20-3	April 19, 2002
1-Naphthylamine	134-32-7	October 1, 1989
2-Naphthylamine	91-59-8	February 27, 1987
Nickel (Metallic)	7440-02-0	October 1, 1989
Nickel acetate	373-02-4	October 1, 1989
Nickel carbonate	3333-67-3	October 1, 1989
Nickel carbonyl	13463-39-3	October 1, 1987
Nickel compounds	—	May 7, 2004
Nickel hydroxide	12054-48-7; 12125-56-3	October 1, 1989
Nickelocene	1271-28-9	October 1, 1989
Nickel oxide	1313-99-1	October 1, 1989
Nickel refinery dust from the pyrometallurgical process	—	October 1, 1987
Nickel subsulfide	12035-72-2	October 1, 1987
Niridazole	61-57-4	April 1, 1988
Nitrapyrin	1929-82-4	October 5, 2005
Nitrilotriacetic acid	139-13-9	January 1, 1988
Nitrilotriacetic acid, trisodium salt monohydrate	18662-53-8	April 1, 1989
5-Nitroacenaphthene	602-87-9	April 1, 1988
5-Nitro-o-anisidine <u>Delisted December 8, 2006</u>	99-59-2	October 1, 1989
o-Nitroanisole	91-23-6	October 1, 1992
Nitrobenzene	98-95-3	August 26, 1997
4-Nitrobiphenyl	92-93-3	April 1, 1988
6-Nitrochrysene	7496-02-8	October 1, 1990
Nitrofen (technical grade)	1836-75-5	January 1, 1988
2-Nitrofluorene	607-57-8	October 1, 1990
Nitrofurazone	59-87-0	January 1, 1990
1-[(5-Nitrofurfurylidene)-amino]-2-imidazolidinone	555-84-0	April 1, 1988
N-[4-(5-Nitro-2-furyl)-2-thiazolyl]acetamide	531-82-8	April 1, 1988
Nitrogen mustard (Mechlorethamine)	51-75-2	January 1, 1988
Nitrogen mustard hydrochloride (Mechlorethamine hydrochloride)	55-86-7	April 1, 1988
Nitrogen mustard N-oxide	126-85-2	April 1, 1988
Nitrogen mustard N-oxide hydrochloride	302-70-5	April 1, 1988
Nitromethane	75-52-5	May 1, 1997
2-Nitropropane	79-46-9	January 1, 1988
1-Nitropyrene	5522-43-0	October 1, 1990
4-Nitropyrene	57835-92-4	October 1, 1990
N-Nitrosodi-n-butylamine	924-16-3	October 1, 1987
N-Nitrosodiethanolamine	1116-54-7	January 1, 1988
N-Nitrosodiethylamine	55-18-5	October 1, 1987
N-Nitrosodimethylamine	62-75-9	October 1, 1987
p-Nitrosodiphenylamine	156-10-5	January 1, 1988
N-Nitrosodiphenylamine	86-30-6	April 1, 1988
N-Nitrosodi-n-propylamine	621-64-7	January 1, 1988
N-Nitroso-N-ethylurea	759-73-9	October 1, 1987
3-(N-Nitrosomethylamino)propionitrile	60153-49-3	April 1, 1990
4-(N-Nitrosomethylamino)-1-(3-pyridyl)1-butanone	64091-91-4	April 1, 1990
N-Nitrosomethylethylamine	10595-95-6	October 1, 1989
N-Nitroso-N-methylurea	684-93-5	October 1, 1987

<u>Chemical</u>	<u>CASNumber</u>	<u>Date</u>
N–Nitroso–N–methylurethane	615–53–2	April 1, 1988
N–Nitrosomethylvinylamine	4549–40–0	January 1, 1988
N–Nitrosomorpholine	59–89–2	January 1, 1988
N–Nitrosornicotine	16543–55–8	January 1, 1988
N–Nitrosopiperidine	100–75–4	January 1, 1988
N–Nitrosopyrrolidine	930–55–2	October 1, 1987
N–Nitrososarcosine	13256–22–9	January 1, 1988
o–Nitrotoluene	88–72–2	May 15, 1998
Norethisterone (Norethindrone)	68–22–4	October 1, 1989
Norethynodrel	68–23–5	February 27, 2001
Ochratoxin A	303–47–9	July 1, 1990
Oil Orange SS	2646–17–5	April 1, 1988
Oral contraceptives, combined	—	October 1, 1989
Oral contraceptives, sequential	—	October 1, 1989
Oryzalin	19044–88–3	September 12, 2008
Oxadiazon	19666–30–9	July 1, 1991
Oxazepam	604–75–1	October 1, 1994
Oxymetholone	434–07–1	January 1, 1988
Oxythioquinox (Chinomethionat)	2439–01–2	August 20, 1999
Palygorskite fibers (> 5µm in length)	12174–11–7	December 28, 1999
Panfuran S	794–93–4	January 1, 1988
Pentachlorophenol	87–86–5	January 1, 1990
Phenacetin	62–44–2	October 1, 1989
Phenazopyridine	94–78–0	January 1, 1988
Phenazopyridine hydrochloride	136–40–3	January 1, 1988
Phenesterin	3546–10–9	July 1, 1989
Phenobarbital	50–06–6	January 1, 1990
Phenolphthalein	77–09–8	May 15, 1998
Phenoxybenzamine	59–96–1	April 1, 1988
Phenoxybenzamine hydrochloride	63–92–3	April 1, 1988
o–Phenylenediamine and its salts	95–54–5	May 15, 1998
Phenyl glycidyl ether	122–60–1	October 1, 1990
Phenylhydrazine and its salts	—	July 1, 1992
o–Phenylphenate, sodium	132–27–4	January 1, 1990
o–Phenylphenol	90–43–7	August 4, 2000
PhiP(2–Amino–1–methyl–6–phenylimidazol[4,5–b]pyridine)	105650–23–5	October 1, 1994
Polybrominated biphenyls	—	January 1, 1988
Polychlorinated biphenyls	—	October 1, 1989
Polychlorinated biphenyls (containing 60 or more percent chlorine by molecular weight)	—	January 1, 1988
Polychlorinated dibenzo–p–dioxins	—	October 1, 1992
Polychlorinated dibenzofurans	—	October 1, 1992
Polygeenan	53973–98–1	January 1, 1988
Ponceau MX	3761–53–3	April 1, 1988
Ponceau 3R	3564–09–8	April 1, 1988
Potassium bromate	7758–01–2	January 1, 1990
Pirimicarb	23103–98–2	July 1, 2008
Primidone	125–33–7	August 20, 1999
Procarbazine	671–16–9	January 1, 1988
Procarbazine hydrochloride	366–70–1	January 1, 1988
Procymidone	32809–16–8	October 1, 1994
Progesterone	57–83–0	January 1, 1988
Pronamide	23950–58–5	May 1, 1996

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Propachlor	1918-16-7	February 27, 2001
1,3-Propane sultone	1120-71-4	January 1, 1988
Propargite	2312-35-8	October 1, 1994
beta-Propiolactone	57-57-8	January 1, 1988
Propoxur	114-26-1	August 11, 2006
Propylene glycol mono- <i>t</i> -butyl ether	57018-52-7	June 11, 2004
Propylene oxide	75-56-9	October 1, 1988
Propylthiouracil	51-52-5	January 1, 1988
Pyridine	110-86-1	May 17, 2002
Quinoline and its strong acid salts	—	October 24, 1997
Radionuclides	—	July 1, 1989
Reserpine	50-55-5	October 1, 1989
Residual (heavy) fuel oils	—	October 1, 1990
Resmethrin	10453-86-8	July 1, 2008
Riddelliine	23246-96-0	December 3, 2004
<u>Saccharin Delisted April 6, 2001</u>	81-07-2	October 1, 1989
<u>Saccharin, sodium Delisted January 17, 2003</u>	128-44-9	January 1, 1988
Safrole	94-59-7	January 1, 1988
Selenium sulfide	7446-34-6	October 1, 1989
Shale-oils	68308-34-9	April 1, 1990
Silica, crystalline (airborne particles of respirable size)	—	October 1, 1988
Soots, tars, and mineral oils (untreated and mildly treated oils and used engine oils)	—	February 27, 1987
Spironolactone	52-01-7	May 1, 1997
Stanozolol	10418-03-8	May 1, 1997
Sterigmatocystin	10048-13-2	April 1, 1988
Streptozotocin (streptozocin)	18883-66-4	January 1, 1988
Strong inorganic acid mists containing sulfuric acid	—	March 14, 2003
Styrene oxide	96-09-3	October 1, 1988
Sulfallate	95-06-7	January 1, 1988
Sulfasalazine (Salicylazosulfapyridine)	599-79-1	May 15, 1998
Talc containing asbestiform fibers	—	April 1, 1990
Tamoxifen and its salts	10540-29-1	September 1, 1996
Terrazole	2593-15-9	October 1, 1994
Testosterone and its esters	58-22-0	April 1, 1988
2,3,7,8-Tetrachlorodibenzo-para-dioxin (TCDD)	1746-01-6	January 1, 1988
1,1,2,2-Tetrachloroethane	79-34-5	July 1, 1990
Tetrachloroethylene (Perchloroethylene)	127-18-4	April 1, 1988
p-a,a,a-Tetrachlorotoluene	5216-25-1	January 1, 1990
Tetrafluoroethylene	116-14-3	May 1, 1997
Tetranitromethane	509-14-8	July 1, 1990
Thioacetamide	62-55-5	January 1, 1988
4,4'-Thiodianiline	139-65-1	April 1, 1988
Thiodicarb	59669-26-0	August 20, 1999
Thiouracil	141-90-2	June 11, 2004
Thiourea	62-56-6	January 1, 1988
Thorium dioxide	1314-20-1	February 27, 1987
Tobacco, oral use of smokeless products	—	April 1, 1988
Tobacco smoke	—	April 1, 1988
Toluene diisocyanate	26471-62-5	October 1, 1989
ortho-Toluidine	95-53-4	January 1, 1988
ortho-Toluidine hydrochloride	636-21-5	January 1, 1988
<u>para-Toluidine Delisted October 29, 1999</u>	106-49-0	January 1, 1990

<u>Chemical</u>	<u>CASNumber</u>	<u>Date</u>
Toxaphene (Polychlorinated camphenes)	8001-35-2	January 1, 1988
Toxins derived from <i>Fusarium moniliforme</i> (<i>Fusarium verticillioides</i>)	—	August 7, 2009
Treosulfan	299-75-2	February 27, 1987
Trichlormethine (Trimustine hydrochloride)	817-09-4	January 1, 1992
Trichloroethylene	79-01-6	April 1, 1988
2,4,6-Trichlorophenol	88-06-2	January 1, 1988
1,2,3-Trichloropropane	96-18-4	October 1, 1992
Trimethyl phosphate	512-56-1	May 1, 1996
2,4,5-Trimethylaniline and its strong acid salts	—	October 24, 1997
2,4,6-Trinitrotoluene (TNT)	118-96-7	December 19, 2008
Triphenyltin hydroxide	76-87-9	July 1, 1992
Tris(aziridinyl)-para-benzoquinone (Triaziquone) <u>Delisted December 8, 2006</u>	68-76-8	October 1, 1989
Tris(1-aziridinyl)phosphine sulfide (Thiotepa)	52-24-4	January 1, 1988
Tris(2-chloroethyl) phosphate	115-96-8	April 1, 1992
Tris(2,3-dibromopropyl)phosphate	126-72-7	January 1, 1988
Trp-P-1 (Tryptophan-P-1)	62450-06-0	April 1, 1988
Trp-P-2 (Tryptophan-P-2)	62450-07-1	April 1, 1988
Trypan blue (commercial grade)	72-57-1	October 1, 1989
Unleaded gasoline (wholly vaporized)	—	April 1, 1988
Uracil mustard	66-75-1	April 1, 1988
Urethane (Ethyl carbamate)	51-79-6	January 1, 1988
Vanadium pentoxide (orthorhombic crystalline form)	1314-62-1	February 11, 2005
Vinclozolin	50471-44-8	August 20, 1999
Vinyl bromide	593-60-2	October 1, 1988
Vinyl chloride	75-01-4	February 27, 1987
4-Vinylcyclohexene	100-40-3	May 1, 1996
4-Vinyl-1-cyclohexene diepoxide (Vinyl cyclohexene dioxide)	106-87-6	July 1, 1990
Vinyl fluoride	75-02-5	May 1, 1997
Vinyl trichloride (1,1,2-Trichloroethane)	79-00-5	October 1, 1990
Wood dust	—	December 18, 2009
2,6-Xylidine (2,6-Dimethylaniline)	87-62-7	January 1, 1991
Zalcitabine	7481-89-2	August 7, 2009
Zidovudine (AZT)	30516-87-1	December 18, 2009
Zileuton	111406-87-2	December 22, 2000
Zineb <u>Delisted October 29, 1999</u>	12122-67-7	January 1, 1990

CHEMICALS KNOWN TO THE STATE TO CAUSE REPRODUCTIVE TOXICITY

<u>Chemical</u>	<u>Type of Reproductive Toxicity</u>	<u>CASNo.</u>	<u>Date Listed</u>
Acetazolamide	developmental	59-66-5	August 20, 1999
Acetohydroxamic acid	developmental	546-88-3	April 1, 1990
Actinomycin D	developmental	50-76-0	October 1, 1992
All-trans retinoic acid	developmental	302-79-4	January 1, 1989
Alprazolam	developmental	28981-97-7	July 1, 1990
Altretamine	developmental, male	645-05-6	August 20, 1999
Amantadine hydrochloride	developmental	665-66-7	February 27, 2001
Amikacin sulfate	developmental	39831-55-5	July 1, 1990
Aminoglutethimide	developmental	125-84-8	July 1, 1990

<u>Chemical</u>	<u>Type of Reproductive Toxicity</u>	<u>CAS No.</u>	<u>Date Listed</u>
tert-Amyl methyl ether	developmental	994-05-8	December 18, 2009
Aminoglycosides	developmental	—	October 1, 1992
Aminopterin	developmental, female	54-62-6	July 1, 1987
Amiodarone hydrochloride	developmental, female, male	19774-82-4	August 26, 1997
Amitraz	developmental	33089-61-1	March 30, 1999
Amoxapine	developmental	14028-44-5	May 15, 1998
Anabolic steroids	female, male	—	April 1, 1990
Angiotensin converting enzyme (ACE) inhibitors	developmental	—	October 1, 1992
Anisindione	developmental	117-37-3	October 1, 1992
Arsenic (inorganic oxides)	developmental	—	May 1, 1997
Aspirin (NOTE: It is especially important not to use aspirin during the last three months of pregnancy, unless specifically directed to do so by a physician because it may cause problems in the unborn child or complications during delivery.)	developmental, female	50-78-2	July 1, 1990
Atenolol	developmental	29122-68-7	August 26, 1997
Auranofin	developmental	34031-32-8	January 29, 1999
Azathioprine	developmental	446-86-6	September 1, 1996
Barbiturates	developmental	—	October 1, 1992
Beclomethasone dipropionate	developmental	5534-09-8	May 15, 1998
Benomyl	developmental, male	17804-35-2	July 1, 1991
Benzene	developmental, male	71-43-2	December 26, 1997
Benzodiazepines	developmental	—	October 1, 1992
Benzphetamine hydrochloride	developmental	5411-22-3	April 1, 1990
Bischloroethyl nitrosourea (BCNU) (Carmustine)	developmental	154-93-8	July 1, 1990
Bromacil lithium salt	developmental male	53404-19-6	May 18, 1999 January 17, 2003
1-Bromopropane	developmental, female, male	106-94-5	December 7, 2004
2-Bromopropane	female, male	75-26-3	May 31, 2005
Bromoxynil	developmental	1689-84-5	October 1, 1990
Bromoxynil octanoate	developmental	1689-99-2	May 18, 1999
Butabarbital sodium	developmental	143-81-7	October 1, 1992
1,3-Butadiene	developmental, female, male	106-99-0	April 16, 2004
1,4-Butanediol dimethane-sulfonate (Busulfan)	developmental	55-98-1	January 1, 1989
Butyl benzyl phthalate (BBP)	developmental	85-68-7	December 2, 2005
n-Butyl glycidyl ether	male	2426-08-6	August 7, 2009
Cadmium	developmental, male	—	May 1, 1997
Carbamazepine	developmental	298-46-4	January 29, 1999
Carbaryl	developmental, male	63-25-2	August 7, 2009
Carbon disulfide	developmental, female, male	75-15-0	July 1, 1989
Carbon monoxide	developmental	630-08-0	July 1, 1989
Carboplatin	developmental	41575-94-4	July 1, 1990
Chenodiol	developmental	474-25-9	April 1, 1990
Chlorambucil	developmental	305-03-3	January 1, 1989
Chlorcyclizine hydrochloride	developmental	1620-21-9	July 1, 1987
Chlordecone (Kepone)	developmental	143-50-0	January 1, 1989

<u>Chemical</u>	<u>Type of Reproductive Toxicity</u>	<u>CAS No.</u>	<u>Date Listed</u>
Chlordiazepoxide	developmental	58-25-3	January 1, 1992
Chlordiazepoxide hydrochloride	developmental	438-41-5	January 1, 1992
1-(2-Chloroethyl)-3-cyclohexyl-1-nitrosourea (CCNU) (Lomustine)	developmental	13010-47-4	July 1, 1990
Chloroform	developmental	67-66-3	August 7, 2009
2-Chloropropionic acid	male	598-78-7	August 7, 2009
Chlorsulfuron	developmental, female, male	64902-72-3	May 14, 1999
Chromium (hexavalent compounds)	developmental, female, male	—	December 19, 2008
Cidofovir	developmental, female, male	113852-37-2	January 29, 1999
Cladribine	developmental	4291-63-8	September 1, 1996
Clarithromycin	developmental	81103-11-9	May 1, 1997
Clobetasol propionate	developmental, female	25122-46-7	May 15, 1998
Clomiphene citrate	developmental	50-41-9	April 1, 1990
Clorazepate dipotassium	developmental	57109-90-7	October 1, 1992
Cocaine	developmental, female	50-36-2	July 1, 1989
Codeine phosphate	developmental	52-28-8	May 15, 1998
Colchicine	developmental, male	64-86-8	October 1, 1992
Conjugated estrogens	developmental	—	April 1, 1990
Cyanazine	developmental	21725-46-2	April 1, 1990
Cycloate	developmental	1134-23-2	March 19, 1999
Cyclohexanol	male	108-93-0	November 6, 1998
<u>Delisted January 25, 2002</u>			
Cycloheximide	developmental	66-81-9	January 1, 1989
Cyclophosphamide (anhydrous)	developmental, female, male	50-18-0	January 1, 1989
phosphamide (hydrated)	developmental, female, male	6055-19-2	January 1, 1989
Cyhexatin	developmental	13121-70-5	January 1, 1989
Cytarabine	developmental	147-94-4	January 1, 1989
Dacarbazine	developmental	4342-03-4	January 29, 1989
Danazol	developmental	17230-88-5	April 1, 1990
Daunorubicin hydrochloride	developmental	23541-50-6	July 1, 1990
2,4-D butyric acid	developmental, male	94-82-6	June 18, 1999
o,p' -DDT	developmental, female, male	789-02-6	May 15, 1998
p,p' -DDT	developmental, female, male	50-29-3	May 15, 1998
2,4 DP (dichloroprop)	developmental	120-36-5	April 27, 1999
<u>Delisted January 25, 2002</u>			
Demeclocycline hydrochloride (internal use)	developmental	64-73-3	January 1, 1992
Diazepam	developmental	439-14-5	January 1, 1992
Diazoxide	developmental	364-98-7	February 27, 2001
1,2-Dibromo-3-chloropropane (DBCP)	male	96-12-8	February 27, 1987
Di-n-butyl phthalate (DBP)	developmental, female, male	84-74-2	December 2, 2005
Dichloroacetic acid	male	79-43-6	August 7, 2009
1,1-Dichloro-2,2-bis(p-chlorophenyl) ethylene (DDE)	developmental, male	72-55-9	March 30, 2010
Dichlorophene	developmental	97-23-4	April 27, 1999
Dichlorophenamide	developmental	120-97-8	February 27, 2001
Diclofop methyl	developmental	51338-27-3	March 5, 1999
Dicumarol	developmental	66-76-2	October 1, 1992
Di(2-ethylhexyl)phthalate (DEHP)	developmental, male	117-81-7	October 24, 2003
Diethylstilbestrol (DES)	developmental	56-53-1	July 1, 1987
Diflunisal	developmental, female	22494-42-4	January 29, 1999

<u>Chemical</u>	<u>Type of Reproductive Toxicity</u>	<u>CAS No.</u>	<u>Date Listed</u>
Diglycidyl ether	male	2238-07-5	August 7, 2009
Di- <i>n</i> -hexyl phthalate (DnHP)	female, male	84-75-3	December 2, 2005
Dihydroergotamine mesylate	developmental	6190-39-2	May 1, 1997
Di-isodecyl phthalate (DIDP)	developmental	68515-49-1/ 26761-40-0	April 20, 2007
Diltiazem hydrochloride	developmental	33286-22-5	February 27, 2001
N,N-Dimethylacetamide	developmental	127-19-5	May 21, 2010
<i>m</i> -Dinitrobenzene	male	99-65-0	July 1, 1990
<i>o</i> -Dinitrobenzene	male	528-29-0	July 1, 1990
<i>p</i> -Dinitrobenzene	male	100-25-4	July 1, 1990
2,4-Dinitrotoluene	male	121-14-2	August 20, 1999
2,6-Dinitrotoluene	male	606-20-2	August 20, 1999
Dinitrotoluene (technical grade)	female, male	—	August 20, 1999
Dinocap	developmental	39300-45-3	April 1, 1990
Dinoseb	developmental, male	88-85-7	January 1, 1989
Diphenylhydantoin (Phenytoin)	developmental	57-41-0	July 1, 1987
Disodium cyanodithioimidocarbonate	developmental	138-93-2	March 30, 1999
Doxorubicin hydrochloride (Adriamycin)	developmental, male	25316-40-9	January 29, 1999
Doxycycline (internal use)	developmental	564-25-0	July 1, 1990
Doxycycline calcium (internal use)	developmental	94088-85-4	January 1, 1992
Doxycycline hyclate (internal use)	developmental	24390-14-5	October 1, 1991
Doxycycline monohydrate (internal use)	developmental	17086-28-1	October 1, 1991
Endrin	developmental	72-20-8	May 15, 1998
Environmental tobacco smoke (ETS)	developmental	—	June 9, 2006
Epichlorohydrin	male	106-89-8	September 1, 1996
Ergotamine tartrate	developmental	379-79-3	April 1, 1990
Estropipate	developmental	7280-37-7	August 26, 1997
Ethionamide	developmental	536-33-4	August 26, 1997
Ethyl alcohol in alcoholic beverages	developmental	—	October 1, 1987
Ethyl- <i>tert</i> -butyl ether	male	637-92-3	December 18, 2009
Ethyl dipropylthiocarbamate	developmental	759-94-4	April 27, 1999
Ethylene dibromide	developmental, male	106-93-4	May 15, 1998
Ethylene glycol monoethyl ether	developmental, male	110-80-5	January 1, 1989
Ethylene glycol monomethyl ether	developmental, male	109-86-4	January 1, 1989
Ethylene glycol monoethyl ether acetate	developmental, male	111-15-9	January 1, 1993
Ethylene glycol monomethyl ether acetate	developmental, male	110-49-6	January 1, 1993
Ethylene oxide	female	75-21-8	February 27, 1987
	developmental, male		August 7, 2009
Ethylene thiourea	developmental	96-45-7	January 1, 1993
2-Ethylhexanoic acid	developmental	149-57-5	August 7, 2009
Etodolac	developmental, female	41340-25-4	August 20, 1999
Etoposide	developmental	33419-42-0	July 1, 1990
Etretinate	developmental	54350-48-0	July 1, 1987
Fenoxaprop ethyl	developmental	66441-23-4	March 26, 1999
Filgrastim	developmental	121181-53-1	February 27, 2001
Fluazifop butyl	developmental	69806-50-4	November 6, 1998
Flunisolid	developmental, female	3385-03-3	May 15, 1998
Fluorouracil	developmental	51-21-8	January 1, 1989
Fluoxymesterone	developmental	76-43-7	April 1, 1998

<u>Chemical</u>	<u>Type of Reproductive Toxicity</u>	<u>CAS No.</u>	<u>Date Listed</u>
Flurazepam hydrochloride	developmental	1172-18-5	October 1, 1992
Flurbiprofen	developmental, female	5104-49-4	August 20, 1999
Flutamide	developmental	13311-84-7	July 1, 1990
Fluticasone propionate	developmental	80474-14-2	May 15, 1998
Fluvalinate	developmental	69409-94-5	November 6, 1998
Ganciclovir	developmental, male	82410-32-0	August 26, 1997
Ganciclovir sodium	developmental, male	107910-75-8	August 26, 1997
Gemfibrozil	female, male	25812-30-0	August 20, 1999
Goserelin acetate	developmental, female, male	65807-02-5	August 26, 1997
Halazepam	developmental	23092-17-3	July 1, 1990
Halobetasol propionate	developmental	66852-54-8	August 20, 1999
Haloperidol	developmental, female	52-86-8	January 29, 1999
Halothane	developmental	151-67-7	September 1, 1996
Heptachlor	developmental	76-44-8	August 20, 1999
Hexachlorobenzene	developmental	118-74-1	January 1, 1989
Hexafluoroacetone	male	684-16-2	August 1, 2008
Hexamethylphosphoramide	male	680-31-9	October 1, 1994
Histrelin acetate	developmental	—	May 15, 1998
Hydramethylnon	developmental, male	67485-29-4	March 5, 1999
Hydroxyurea	developmental	127-07-1	May 1, 1997
Idarubicin hydrochloride	developmental, male	57852-57-0	August 20, 1999
Ifosfamide	developmental	3778-73-2	July 1, 1990
Iodine-131	developmental	10043-66-0	January 1, 1989
Isotretinoin	developmental	4759-48-2	July 1, 1987
Lead	developmental, female, male	—	February 27, 1987
Leuprolide acetate	developmental, female, male	74381-53-6	August 26, 1997
Levodopa	developmental	59-92-7	January 29, 1999
Levonorgestrel implants	female	797-63-7	May 15, 1998
Linuron	developmental	330-55-2	March 19, 1999
Lithium carbonate	developmental	554-13-2	January 1, 1991
Lithium citrate	developmental	919-16-4	January 1, 1991
Lorazepam	developmental	846-49-1	July 1, 1990
Lovastatin	developmental	75330-75-5	October 1, 1992
Mebendazole	developmental	31431-39-7	August 20, 1999
Medroxyprogesterone acetate	developmental	71-58-9	April 1, 1990
Megestrol acetate	developmental	595-33-5	January 1, 1991
Melphalan	developmental	148-82-3	July 1, 1990
Menotropins	developmental	9002-68-0	April 1, 1990
Meproamate	developmental	57-53-4	January 1, 1992
Mercaptopurine	developmental	6112-76-1	July 1, 1990
Mercury and mercury compounds	developmental	—	July 1, 1990
Methacycline hydrochloride	developmental	3963-95-9	January 1, 1991
Metham sodium	developmental	137-42-8	May 15, 1998
Methazole	developmental	20354-26-1	December 1, 1999
Methimazole	developmental	60-56-0	July 1, 1990
Methotrexate	developmental	59-05-2	January 1, 1989
Methotrexate sodium	developmental	15475-56-6	April 1, 1990
Methyl bromide as a structural fumigant	developmental	74-83-9	January 1, 1993
Methyl chloride	developmental	74-87-3	March 10, 2000
	male		August 7, 2009
Methyl n-butyl ketone	male	591-78-6	August 7, 2009

<u>Chemical</u>	<u>Type of Reproductive Toxicity</u>	<u>CAS No.</u>	<u>Date Listed</u>
Methyl mercury	developmental	—	July 1, 1987
N-Methylpyrrolidone	developmental	872-50-4	June 15, 2001
Methyltestosterone	developmental	58-18-4	April 1, 1990
Metiram	developmental	9006-42-2	March 30, 1999
Midazolam hydrochloride	developmental	59467-96-8	July 1, 1990
Minocycline hydrochloride (internal use)	developmental	13614-98-7	January 1, 1992
Misoprostol	developmental	59122-46-2	April 1, 1990
Mitoxantrone hydrochloride	developmental	70476-82-3	July 1, 1990
Molinate	developmental, female, male	2212-67-1	December 11, 2009
Myclobutanil	developmental, male	88671-89-0	April 16, 1999
Nabam	developmental	142-59-6	March 30, 1999
Nafarelin acetate	developmental	86220-42-0	April 1, 1990
Neomycin sulfate (internal use)	developmental	1405-10-3	October 1, 1992
Netilmicin sulfate	developmental	56391-57-2	July 1, 1990
Nickel carbonyl	developmental	13463-39-3	September 1, 1996
Nicotine	developmental	54-11-5	April 1, 1990
Nifedipine	developmental, female, male	21829-25-4	January 29, 1999
Nimodipine	developmental	66085-59-4	April 24, 2001
Nitrapyrin	developmental	1929-82-4	March 30, 1999
Nitrobenzene	male	98-95-3	March 30, 2010
Nitrofurantoin	male	67-20-9	April 1, 1991
Nitrogen mustard (Mechlorethamine)	developmental	51-75-2	January 1, 1989
Nitrogen mustard hydrochloride (Mechlorethamine hydrochloride)	developmental	55-86-7	July 1, 1990
Nitrous oxide	developmental	10024-97-2	August 1, 2008
Norethisterone (Norethindrone)	developmental	68-22-4	April 1, 1990
Norethisterone acetate (Norethindrone acetate)	developmental	51-98-9	October 1, 1991
Norethisterone (Norethindrone) /Ethinyl estradiol	developmental	68-22-4/ 57-63-6	April 1, 1990
Norethisterone (Norethindrone)/Mestranol	developmental	68-22-4/ 72-33-3	April 1, 1990
Norgestrel	developmental	6533-00-2	April 1, 1990
Oxadiazon	developmental	19666-30-9	May 15, 1998
Oxazepam	developmental	604-75-1	October 1, 1992
p,p'-Oxybis(benzenesulfonyl hydrazide)	developmental	80-51-3	August 7, 2009
Oxydemeton methyl	female, male	301-12-2	November 6, 1998
Oxymetholone	developmental	434-07-1	May 1, 1997
Oxytetracycline (internal use)	developmental	79-57-2	January 1, 1991
Oxytetracycline hydrochloride (internal use)	developmental	2058-46-0	October 1, 1991
Oxythioquinox (Chinomethionat)	developmental	2439-01-2	November 6, 1998
Paclitaxel	developmental, female, male	33069-62-4	August 26, 1997
Paramethadione	developmental	115-67-3	July 1, 1990
Penicillamine	developmental	52-67-5	January 1, 1991
Pentobarbital sodium	developmental	57-33-0	July 1, 1990
Pentostatin	developmental	53910-25-1	September 1, 1996
Phenacemide	developmental	63-98-9	July 1, 1990
Phenprocoumon	developmental	435-97-2	October 1, 1992
Phenyl glycidyl ether	male	122-60-1	August 7, 2009

<u>Chemical</u>	<u>Type of Reproductive Toxicity</u>	<u>CAS No.</u>	<u>Date Listed</u>
Phenylphosphine	developmental	638-21-1	August 7, 2009
Pimozide	developmental, female	2062-78-4	August 20, 1999
Pipobroman	developmental	54-91-1	July 1, 1990
Plicamycin	developmental	18378-89-7	April 1, 1990
Polybrominated biphenyls	developmental	—	October 1, 1994
Polychlorinated biphenyls	developmental	—	January 1, 1991
Potassium dimethyldithiocarbamate	developmental	128-03-0	March 30 1999
Pravastatin sodium	developmental	81131-70-6	March 3, 2000
Prednisolone sodium phosphate	developmental	125-02-0	August 20, 1999
Procarbazine hydrochloride	developmental	366-70-1	July 1, 1990
Propargite	developmental	2312-35-8	June 15, 1999
Propylthiouracil	developmental	51-52-5	July 1, 1990
Pyrimethamine	developmental	58-14-0	January 29, 1999
Quazepam	developmental	36735-22-5	August 26, 1997
Quizalofop-ethyl	male	76578-14-8	December 24, 1999
Resmethrin	developmental	10453-86-8	November 6, 1998
Retinol/retinyl esters, when in daily dosages in excess of 10,000 IU, or 3,000 retinol equivalents. (NOTE: Retinol/retinyl esters are required and essential for maintenance of normal reproductive function. The recommended daily level during pregnancy is 8,000 IU.)	developmental	—	July 1, 1989
Ribavirin	developmental	36791-04-5	April 1, 1990
	male	36791-04-5	February 27, 2001
Rifampin	developmental, female	13292-46-1	February 27, 2001
Secobarbital sodium	developmental	309-43-3	October 1, 1992
Sermorelin acetate	developmental	—	August 20, 1999
Sodium dimethyldithiocarbamate	developmental	128-04-1	March 30 1999
Sodium fluoroacetate	male	62-74-8	November 6, 1998
Streptomycin sulfate	developmental	3810-74-0	January 1, 1991
Streptozocin (streptozotocin)	developmental, female, male	18883-66-4	August 20, 1999
Sulfasalazine (Salicylazosulfapyridine)	male	599-79-1	January 29, 1999
Sulindac	developmental, female	38194-50-2	January 29, 1999
Tamoxifen citrate	developmental	54965-24-1	July 1, 1990
Temazepam	developmental	846-50-4	April 1, 1990
Teniposide	developmental	29767-20-2	September 1, 1996
Terbacil	developmental	5902-51-2	May 18, 1999
Testosterone cypionate	developmental	58-20-8	October 1, 1991
Testosterone enanthate	developmental	315-37-7	April 1, 1990
2,3,7,8-Tetrachlorodibenzo-para-dioxin (TCDD)	developmental	1746-01-6	April 1, 1991
Tetracycline (internal use)	developmental	60-54-8	October 1, 1991
Tetracyclines (internal use)	developmental	—	October 1, 1992
Tetracycline hydrochloride (internal use)	developmental	64-75-5	January 1, 1991
Thalidomide	developmental	50-35-1	July 1, 1987
Thioguanine	developmental	154-42-7	July 1, 1990
Thiophanate methyl	female, male	23564-05-8	May 18, 1999
Tobacco smoke (primary)	developmental, female, male	—	April 1, 1988

<u>Chemical</u>	<u>Type of Reproductive Toxicity</u>	<u>CAS No.</u>	<u>Date Listed</u>
Tobramycin sulfate	developmental	49842-07-1	July 1, 1990
Toluene	developmental female	108-88-3	January 1, 1991 August 7, 2009
Triadimefon	developmental, female, male	43121-43-3	March 30, 1999
Triazolam	developmental	28911-01-5	April 1, 1990
Tributyltin methacrylate	developmental	2155-70-6	December 1, 1999
Trientine hydrochloride	developmental	38260-01-4	February 27, 2001
Triforine	developmental	26644-46-2	June 18, 1999
1,3,5-Triglycidyl-s-triazinetriene	male	2451-62-9	August 7, 2009
Trilostane	developmental	13647-35-3	April 1, 1990
Trimethadione	developmental	127-48-0	January 1, 1991
Trimetrexate glucuronate	developmental	82952-64-5	August 26, 1997
Triphenyltin hydroxide	developmental	76-87-9	March 18, 2002
Uracil mustard	developmental, female, male	66-75-1	January 1, 199
Urethane	developmental	51-79-6	October 1, 1994
Urofollitropin	developmental	97048-13-0	April 1, 1990
Valproate (Valproic acid)	developmental	99-66-1	July 1, 1987
Vinblastine sulfate	developmental	143-67-9	July 1, 1990
Vinclozolin	developmental	50471-44-8	May 15, 1998
Vincristine sulfate	developmental	2068-78-2	July 1, 1990
4-Vinylcyclohexene	female, male	100-40-03	August 7, 2009
Vinyl cyclohexene dioxide (4-Vinyl-1-cyclohexene diepoxide)	female, male	106-87-6	August 1, 2008
Warfarin	developmental	81-81-2	July 1, 1987
Zileuton	developmental, female	111406-87-2	December 22, 2000

Date: June 11, 2010

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

**CALIFORNIA ENVIRONMENTAL
PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT**

**SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986
(PROPOSITION 65)**

**NOTICE OF REVISION TO THE BASIS FOR
LISTING A CHEMICAL: CHLORSULFURON
June 11, 2010**

Proposition 65¹ provides mechanisms for administratively listing chemicals that are known to the State to cause cancer or reproductive toxicity (Health and Safe-

ty Code section 25249.8(b)). A chemical may be listed under Proposition 65 when a body considered to be authoritative has formally identified the chemical as causing cancer or reproductive toxicity. The criteria for listing chemicals through the authoritative bodies mechanism are set forth in Title 27, California Code of Regulations, section 25306.

The Office of Environmental Health Hazard Assessment (OEHHA), within the California Environmental Protection Agency, is the lead agency for the implementation of Proposition 65. OEHHA listed chlorsulfuron, as identified in the table below, as known to the State to cause reproductive toxicity via the authoritative bodies listing mechanism effective May 14, 1999. Developmental, male reproductive, and female reproductive toxicity were all identified as endpoints forming the basis for listing.

Chemical	CAS No.	Reference
Chlorsulfuron	6490-27-23	U.S. EPA (1994a,b)

The listing was based on findings by the U.S. Environmental Protection Agency (U.S. EPA), a Proposi-

¹ The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code section 25249.5 et seq.

tion 65 authoritative body. U.S. EPA (1994a and 1994b) concluded that: “. . .there is sufficient evidence for listing chlorsulfuron on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental and reproductive toxicity data for this chemical.”

The developmental toxicity finding was based on increased incidence of fetal resorptions in rabbits. The reproductive toxicity finding was based on a decreased fertility index in a rat multi-generation reproduction study.

Because U.S. EPA identified reproductive toxicity on the basis of a decrease in fertility index in a multi-generation reproduction study, which could potentially have resulted from adverse reproductive effects in both males and females, OEHHHA identified both male and female reproductive toxicity as bases for listing chlorsulfuron under Proposition 65. A more recent document from U.S. EPA clarified that the agency interpreted the data from that study as demonstrating only decreased female fertility (U.S. EPA, 2002). There is therefore no formal identification of male reproductive toxicity for chlorsulfuron by U.S. EPA. Consequently, effective June 11, 2010, OEHHHA will remove male reproductive toxicity as a basis for the listing of chlorsulfuron. Chlorsulfuron will remain on the Proposition 65 list based on U.S. EPA's findings of developmental and female reproductive toxicity.

REFERENCES

U.S. Environmental Protection Agency (U.S. EPA, 1993). Support Document for the Addition of Chemicals from Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) Active Ingredients to EPCRA Section 313. USEPA/OPP.

U.S. Environmental Protection Agency (U.S. EPA, 1994a). Proposed Rule: Addition of Certain Chemicals; Toxic Chemical Release Reporting; Community Right to Know. *Federal Register* **59**: 1788.

U.S. Environmental Protection Agency (U.S. EPA, 1994b). Final Rule: Addition of Certain Chemicals; Toxic Chemical Release Reporting; Community Right to Know. *Federal Register* **59**(229): 61432.

U.S. Environmental Protection Agency (U.S. EPA, 2002). Chlorsulfuron: Toxicology Disciplinary Chapter for the Registration Eligibility Decision (RED). Health Effects Division, Office of Pesticide Programs. PC Code: 118601.

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

California Environmental Protection Agency
Office of Environmental Health Hazard Assessment

WITHDRAWAL OF REGULATORY CONCEPT

PROPOSITION 65 REGULATORY UPDATE PROJECT POSSIBLE AMENDMENTS TO SECTIONS 25801, 25803, AND 25805 NO OBSERVABLE EFFECT LEVELS

May 28, 2010

The Office of Environmental Health Hazard Assessment (OEHHHA) hereby announces the withdrawal of its regulatory proposal for possible amendments to Sections 25801, 25803 and 25805 of the Proposition 65¹ implementing regulations. These sections establish the procedures for calculating “safe harbor” levels for chemicals listed under Proposition 65. On April 14, 2010, the California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHHA) held a pre-regulatory public workshop to discuss possible draft language for amendments to these regulations. The public comment period on the regulatory concept closes on May 28, 2010.

OEHHHA has determined that significant changes will be made to the proposal and is therefore withdrawing it at this time. OEHHHA will provide notice and an opportunity to comment, prior to beginning any formal regulatory process related to this proposal. We appreciate the input we have received from the public concerning this concept.

Questions or comments may be sent to fkammerer@oehha.ca.gov or at the following address:

Mailing Address: Fran Kammerer
Office of Environmental Health
Hazard Assessment
P.O. Box 4010, MS-19B
Sacramento, California
95812-4010

Fax: (916) 323-8803

Street Address: 1001 I Street
Sacramento, California 95814

¹ The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code section 25249.5 et seq.

OAL REGULATORY DETERMINATIONS

OFFICE OF ADMINISTRATIVE LAW

DETERMINATION OF ALLEGED UNDERGROUND REGULATION (Summary Disposition)

(Pursuant to Government Code
Section 11340.5 and
Title 1, section 270, of the
California Code of Regulations)

The attachments are not being printed for practical reasons or space considerations. However, if you would like to view the attachments please contact Margaret Molina at (916) 324-6044 or mmolina@oal.ca.gov.

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Date: May 26, 2010
To: Ronald Russell
From: Chapter Two Compliance Unit
Subject: **2010 OAL DETERMINATION NO. 9(S)**
(CTU2010-0330-01)
(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5; Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as underground regulations California Code of Regulations title 15, section 3006(c)(19) and California Department of Corrections and Rehabilitation's (CDCR) Form 115.

On March 29, 2010, you submitted a petition to the Office of Administrative Law (OAL) asking for a determination as to whether California Code of Regulations (CCR) section 3006(c)(19) of title 15 and CDCR Form 115 constitute underground regulations. The challenged rules are attached hereto as Exhibit A and Exhibit B, respectively. Section 3006(c)(19), titled "Contraband" states:

(c) Except as authorized by the institution head, inmates shall not possess or have under their control any matter which contains or concerns any of the following:

. . .

(19) Cellular telephone or other electronic communications device.

Form 115 (Rules Violation Report), incorporated by reference into section 3312 of title 15, provides for the documentation of an inmate's misconduct when it is believed to be a violation of law or is not minor in nature.

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a "regulation" as defined in Government Code section 11342.600,¹ which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).²

If a rule meets the definition of a regulation in Government Code section 11342.600, but was not adopted pursuant to the APA, it may be an "underground regulation" as defined in California Code of Regulations, title 1, section 250:

The following definitions shall apply to the regulations contained in this chapter:

(a) "Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, *but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA* and is not subject to an express statutory exemption from adoption pursuant to the APA. (Emphasis added.)

The section and form you challenge as underground regulations, California Code of Regulations, title 15, section 3006 (c)(19) and Form 115, were duly adopted as regulatory amendments pursuant to the APA and filed with the Secretary of State. Both section 3006(c)(19) and Form 115 (incorporated by reference into section 3312 of title 15) were filed with the Secretary of State on August 4, 2008, in compliance with the APA.

The petition also alleges that these regulatory amendments, as applied to you, were not properly enforced by CDCR. OAL does not have the jurisdiction or authority to review and evaluate actions taken by other state agencies pursuant to duly adopted regulatory amendments.

¹ "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

² Such a rule is called an "underground regulation" as defined in California Code of Regulations, title 1, section 250, subsection (a):

"Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

The petition further alleges the need for a Certificate of Compliance to be filed by CDCR with respect to these matters, and that none was filed. Please note that a Certificate of Compliance is only relevant to emergency regulatory matters. (See Government Code sections 11346.1(e) and 11349.6(d).) The rulemaking that was submitted with respect to the adoption of section 3006(c)(19) and Form 115 was not an emergency rulemaking. Therefore, the filing of a Certificate of Compliance was not necessary.

For the reasons discussed above, we find that the rule challenged by your petition is not an underground regulation.³

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.

/s/

SUSAN LAPSLEY

Director

/s/

Elizabeth Heidig

Staff Counsel

Copy: Matthew Cate

John McClure

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Date: May 26, 2010

To: Derrick Martin

From: Chapter Two Compliance Unit

Subject: **2010 OAL DETERMINATION NO. 10(S)**
(CTU2010-0406-01)

³ The rule challenged by your petition is the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides:

(f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.

(2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:

(A) The challenged rule has been superseded.

(B) The challenged rule is contained in a California statute.

(C) The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.

(D) The challenged rule has expired by its own terms.

(E) An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule.

(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5; Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as an underground regulation Memorandum titled "3 and 5 Percent Redirection Plans"

On April 6, 2010, you submitted a petition to the Office of Administrative Law (OAL) asking for a determination as to whether a memorandum dated February 10, 2010, constitutes an underground regulation. The memorandum is titled "3 and 5 Percent Redirection Plans." This memorandum was issued by the warden at the Correctional Training Facility and is attached hereto as Exhibit A.¹ The memorandum sets out the plans for possible 3% and 5% reductions in funding that may be imposed in the future at the Correctional Training Facility.

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a "regulation" as defined in Government Code section 11342.600,² which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).³ Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

Generally, a rule which meets the definition of a "regulation" in Government Code section 11342.600 is required to be adopted pursuant to the APA. In some cases, however, the Legislature has chosen to establish exemptions from the requirements of the APA. Penal Code section 5058, subdivision (c), establishes exemptions expressly for the California Department of Corrections and Rehabilitation (CDCR):

¹ The memorandum references attachments which were not included with the petition, and to which OAL did not have access; therefore, this determination is specific to the text of the memorandum.

² "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

³ Such a rule is called an "underground regulation" as defined in California Code of Regulations, title 1, section 250, subsection (a):

"Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

(c) The following are deemed not to be “regulations” as defined in Section 11342.600 of the Government Code:

(1) Rules issued by the director applying solely to a particular prison or other correctional facility. . . .

This exemption is called the “local rule” exemption. It applies only when a rule is established for a single correctional institution.

In *In re Garcia* (67 Cal.App.4th 841, 845), the court discussed the nature of a “local rule” adopted by the warden for the Richard J. Donovan Correctional Facility (Donovan) which dealt with correspondence between inmates at Donovan:

The Donovan inter-institutional correspondence policy applies solely to correspondence entering or leaving Donovan. It applies to Donovan inmates in all instances.

. . .

The Donovan policy is not a rule of general application. It applies solely to Donovan and, under Penal Code section 5058, subdivision (c)(1), is not subject to APA requirements.

Similarly, the rule challenged by your petition applies solely to the inmates and staff of the Correctional Training Facility. It was issued by Randy Grounds, Warden (A) of the Correctional Training Facility. The proposed budget reductions are specific to the Correctional Training Facility and would apply only at the Correctional Training Facility. Inmates and staff at other institutions are governed by those other institutions’ plans for any proposed reduction in funding. Therefore, the challenged rule is a “local rule” and is exempt from compliance with the APA pursuant to Penal Code section 5058(c)(1). It is not an underground regulation.⁴

⁴ The rule challenged by your petition is the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides:

(f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.

(2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:

(A) The challenged rule has been superseded.

(B) The challenged rule is contained in a California statute.

(C) The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.

(D) The challenged rule has expired by its own terms.

(E) An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule.

(Emphasis added.)

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.

/s/

SUSAN LAPSLEY

Director

/s/

Senior Counsel

Kathleen Eddy

Copy: Matthew Cate

John McClure

Exhibit A

State of California Department of Corrections and Rehabilitation

Memorandum

Date : February 10, 2010

To : James D. Hartley

Associate Director (A)

General Population Level II/III

Camps & Community Correctional Facilities

Subject: **3 AND 5 PERCENT REDIRECTION PLANS**

Attached are the 3% and 5% Redirection Plan Attachments #1 and #2 for the Correctional Training Facility. These savings are accomplished utilizing rotating yard/program closures for the inmate population at Central and North facilities and redirecting associated staffing to offset overtime. Using the average hourly rates as reported in TEMS, we anticipate saving \$186,000 per month with the implementation of the 3% Redirection Plan and \$305,000 per month with the 5% plan.

The implementation of the 3% Redirection Plan will require the following:

- All CCI staff will respond to all Code 1 and Code 3 alarms.
- All remaining designated custody staff will continue to respond to all alarms.
- Central Services Sergeant will serve as the Code 2 response supervisor replacing the Culinary Sergeant in this Capacity.
- Cell Feeding
- Controlled Movement for priority ducats, Health Care Services appointments, SAP, Vocational Programs and Education.
- No Dayroom activities due to alarm response.
- North Central Services S&E’s will become code II responders.
- To accomplish medication distribution, Health Care Services personnel will be required to distribute medications within the housing unit as opposed to the open pill lines.

When Implementing the 5% Redirection Plan, the changes identified in the 3% Plan will remain in effect and will also include the following:

- During the 5% Redirection Plan, Central Facility Unit I and Unit III custody staff (gate officers) will rotate within their respective units to conduct necessary releases, i.e. Education, Textiles. For example, this rotation will require a staff member from E-Wing to report to F-Wing to assist in controlled releases.
- Central Facility Unit I and Unit III counseling staff will assist with PIA (Textiles) and Work Assignment releases if deemed necessary. This option would not be feasible if the East Dorm was deactivated.

If you have any questions regarding the attached plans, please contact me at (831) 678-5951.

/s/
RANDY GROUNDS
Warden (A)

**ACCEPTANCE OF PETITION
TO REVIEW ALLEGED
UNDERGROUND REGULATIONS**

OFFICE OF ADMINISTRATIVE LAW

**ACCEPTANCE OF PETITION TO REVIEW
ALLEGED UNDERGROUND REGULATIONS**

**(Pursuant to title 1, section 270, of the
California Code of Regulations)**

The Office of Administrative Law has accepted the following petition for consideration. Please send your comments to:

Kathleen Eddy, Senior Counsel
Office of Administrative Law
300 Capitol Mall, Ste. 1250
Sacramento, CA 95814

A copy of your comment must also be sent to the petitioner and the agency contact person.
Petitioner:

William Gausewitz
Michelman & Robinson, LLP
915 L Street, Ste. 1110
Sacramento, CA 95814

Agency contact:

Steve Poizner, Insurance Commissioner
300 Capitol Mall, 17th Floor
Sacramento, CA 95814

Please note the following timelines:

Publication of Petition in California Regulatory Notice Register: June 11, 2010
Deadline for Public Comment: July 12, 2010
Deadline for Agency Response: July 26, 2010
Deadline for Petitioner Rebuttal: No later than 15 days after receipt of the agency's response
Deadline for OAL Decision: October 11, 2010

The attachments are not being printed for practical reasons or space considerations. However, if you would like to view the attachments please contact Margaret Molina at (916) 324-6044 or mmolina@oal.ca.gov.

DEPARTMENT OF INSURANCE

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**CALIFORNIA OFFICE OF
ADMINISTRATIVE LAW**

**CALIFORNIA DEPARTMENT OF
INSURANCE**

**COMMUNICATIONS TO INSURERS
DATED FEBRUARY 10, 2010, AND
MARCH 4, 2010.**

**PETITION FOR DETERMINATION
PURSUANT TO CALIFORNIA
GOVERNMENT CODE §11340.5**

1) INTRODUCTION. The Petitioner has been retained by and is acting on behalf of the American Council of Life Insurers (ACLI), the American Insurance Association (AIA), the Association of California Insurance Companies (ACIC), the Association of California Life and Health Insurance Companies (ACLHIC), and the Personal Insurance Federation of California (PIFC). This petition is submitted to the Office of Administrative Law (OAL) requesting a determination pursuant to

California Government Code § 11340.5¹ of whether the above-captioned communications contain underground regulations as defined by title 10, Cal Code Regs § 250(a)². These communications designate certain companies as “doing business with the Iranian oil and natural gas, nuclear, and defense sectors”, they require each California-licensed insurer to submit a statement to the California Department of Insurance (Department) stating its future intentions regarding investment in the designated companies, and they require all insurers to report investments in those companies as non-admitted assets on their quarterly and annual statements. These requirements in the communications are illegal underground regulations.

An underground regulation is invalid and unenforceable³. By issuing these underground regulations, the Department is attempting to implement regulations which are void, and therefore unenforceable. If the Department wishes to implement the rules that it is attempting to impose through these underground regulations it must do so within the scope of its statutory authority pursuant to section 11342.1 of the Government Code⁴ and it must comply with the other procedural and substantive requirements of the California Administra-

tive Procedure Act (APA), found in California Government Code sections 11340 *et seq.*

This petition does not ask OAL to determine whether or not the Department actually has authority to issue the challenged underground regulations. Such a determination is beyond the scope of a petition pursuant to Gov. Code § 11340.5. An evaluation of the scope of the Department’s authority should occur in the course of formal APA rulemaking. The Department has never identified specific statutes which might authorize these actions, as it would be required to do in formal APA rulemaking. By issuing these rules as underground regulations, without going through formal APA rulemaking, the Department has avoided any scrutiny regarding its legal power, or lack thereof, to impose these requirements. Only by requiring the Department to obey the APA may its authority, or its lack of authority, be revealed.

The Department’s authority is certainly not unlimited. An earlier attempt by the Department to regulate in the area of foreign affairs was invalidated by the United States Supreme Court, which found that federal law preempted state law in the matter under review (*American Insurance Association v. Garamendi*, 539 U.S. 396; 123 S. Ct. 2374; 156 L. Ed. 2d 376 (2003)). Since we know that the Department’s authority is not unlimited, it is important to subject these rules to formal APA rulemaking so that this issue may be examined. The Department should not be permitted to avoid this review by issuing these rules as underground regulations. An OAL determination on this issue is therefore the first step in evaluating the underlying legality of the rules themselves.

2) THE PURPORTED UNDERGROUND REGULATIONS. On February 10, 2010, the Department distributed three documents related to insurer investments in business entities that the Department believes conduct business in Iran. These three documents comprise:

- A) A form letter directed to insurers with the subject “Identification of Companies Doing Business in Specified Iranian Economic Sectors; Treatment of Investments in Such Companies on Insurers’ Financial Statements; Request for Moratorium on Future Iran-Related Investments”. A copy of that letter is attached to this petition as Exhibit A.
- B) A list entitled “List Of Companies Doing Business With The Iranian Petroleum/Natural Gas, Nuclear, And Defense Sectors (As Of February 9, 2010)”. A copy of that list is attached to this petition as Exhibit B.

¹ Section 11340.5 provides in pertinent part “(a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter. ¶ (b) If the office [OAL] is notified of, or on its own, learns of the issuance, enforcement of, or use of, an agency guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule that has not been adopted as a regulation and filed with the Secretary of State pursuant to this chapter, the office may issue a determination as to whether the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, is a regulation as defined in Section 11342.600.”

² Title 10, Cal Code Regs 250(a) “ ‘Underground regulation’ means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.”

³ A “regulation or order of repeal may be declared to be invalid for a substantial failure to comply with [the rulemaking chapter of the APA]” Cal Gov Code § 11350.

“[W]e conclude that DLSE’s policy for determining whether to apply IWC wage orders to maritime employees constitutes a regulation and is void for failure to comply with the APA.” *Tide-water Marine Western, Inc. v. Bradshaw*, 14 Cal. 4th 557, 576 (Cal. 1996)

⁴ The pertinent part of Cal Gov Code § 11342.1 provides that “Each regulation adopted, to be effective, shall be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.”

- C) A document entitled “Response Form — Insurer Agreement Not To Invest In Companies Doing Business With The Iranian Oil And Natural Gas, Nuclear, And Defense Sectors”. A copy of that document is attached to this petition as Exhibit C.

On March 4, 2010 the Department distributed an email message all California licensed insurers from “CA Department of Insurance FSB” addressed to “Statutory Financial Statement Contact Person”. A copy of this email message is attached to this petition as Exhibit D.

Collectively these four documents contain at least three different underground regulations in violation of section 11340.5 of the Government Code. These underground regulations are:

- A) The provision of Exhibit A declaring that “effective March 31, 2010, the Department will treat all investments by insurers holding a certificate of authority to transact insurance in California in companies on the List and affiliates owned 50% or more by companies on the List as non-admitted on the insurer’s financial statements. For all financial statements filed with the Department for periods ending on or after March 31, 2010, each insurer must report all of its investment holdings on the List as not admitted assets.” This will be referred to in this petition as the “Non-admitted Asset Rule.”
- B) The Department’s determination in Exhibit A that the companies listed in Exhibit B are “subject to financial risk as a result of doing business with the Iranian oil and natural gas, nuclear, and defense sectors.” This will be referred to in this petition as the “Listed Company Rule.”
- C) The mandate imposed upon insurers, pursuant to Exhibit A, C and D, to submit a response form to the Department not later than April 2, 2010. This will be referred to in this petition as the “Mandatory Response Rule.”

3) AGENCY ACTIONS DEMONSTRATING THAT THE DEPARTMENT HAS ISSUED, USED, ENFORCED, OR ATTEMPTED TO ENFORCE THE PURPORTED UNDERGROUND REGULATIONS. Exhibits A–D are, by their own terms, directives addressed to insurers and issued by the Department. They are manifestly documents demonstrating, at the least, that the Department has issued the purported underground regulations. The letter of February 10 is signed by the General Counsel of the Department. The March 4 email was sent from the Department’s Financial Surveillance Branch. Individual insurers have reported to the Petitioner that they have received these documents from the Department of Insurance, delivered by the U.S. Postal Service.

Also, the Department has publicly announced that it is taking the actions indicated in the documents. On February 10, 2010 the Department issued a press release on this subject. The lead paragraph of this press release says the following:

California Insurance Commissioner Steve Poizner today released a list of 50 companies doing business in the Iranian oil and natural gas, nuclear and defense sectors and announced that as of March 31, 2010, no investments that an insurer holds in any of those companies will be recognized on its financial statements in California.

The Department’s February 10 press release also makes reference to “the Department’s form which all insurers must complete and return to the Department by March 12, 2010.” These references in the Department’s February 10 press release clearly demonstrate that the Department has issued the challenged underground regulations. A copy of the Department’s February 10 press release on this topic is attached to this petition as Exhibit E. This copy of the press release was downloaded from the Department’s web site at <http://www.insurance.ca.gov/0400-news/0100-press-releases/2010/release021-10.cfm>.

On March 26, 2010 the Department issued another press release discussing the “progress” in the Department’s “initiative” regarding Iran. The fact that the Department is reporting progress on this initiative clearly demonstrates that the Department has issued, used enforced or attempted to enforce the purported underground regulations. The Department’s March 26 press release is available on its web site at <http://www.insurance.ca.gov/0400-news/0100-press-releases/2010/release045-10.cfm>. A copy of the March 26, 2010 press release downloaded from this web site is attached to this petition as Exhibit F.

4) THE LEGAL BASIS FOR BELIEVING THAT THE ALLEGED UNDERGROUND REGULATIONS ARE REGULATIONS AS DEFINED IN SECTION 11342.600 OF THE GOVERNMENT CODE AND THAT NO EXPRESS STATUTORY EXEMPTION TO THE REQUIREMENTS OF THE APA IS APPLICABLE.

4a) The challenged underground regulations satisfy the legal definition of “regulation” and are not exempt from APA requirements. The APA defines a regulation as “every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure” (Cal Gov Code § 11342.600). The California Supreme Court has refined this definition as follows:

A regulation subject to the APA thus has two principal identifying characteristics. (See *Union of American Physicians & Dentists v. Kizer* (1990) 223 Cal. App. 3d 490, 497 [272 Cal. Rptr. 886] [describing two-part test of the Office of Administrative Law].) First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided (*Roth v. Department of Veterans Affairs* (1980) 110 Cal. App. 3d 622, 630 [167 Cal. Rptr. 552].) Second, the rule must “implement, interpret, or make specific the law enforced or administered by [the agency], or . . . govern [the agency’s] procedure” (Gov. Code, § 11342, subd. (g).) *Tidewater Marine Western, Inc. v. Bradshaw*, 14 Cal. 4th 557, 571 (Cal. 1996)

In order to conclude that the purported underground regulations satisfy the legal standard, therefore, it must be demonstrated that each of them is intended to apply generally and that each implements, interprets or makes specific a more general law. Each of the challenged underground regulations meets these standards.

A third requirement of Gov. Code § 11340.5 is that the challenged regulation must not be exempt from APA rulemaking requirements. Pursuant to Gov. Code § 11346, any law exempting a regulation from APA rulemaking requirements “must do so expressly.” The challenged underground regulations, therefore, are required to be adopted pursuant to APA rulemaking requirements unless they are subject to an express statutory exemption from those requirements. They are not.

4b) The Non-admitted Asset Rule. The Non-admitted Asset Rule is stated in Exhibit A as follows:

[E]ffective March 31, 2010, the Department will treat all investments by insurers holding a certificate of authority to transact insurance in California in companies on the List and affiliates owned 50% or more by companies on the List as non-admitted on the insurer’s financial statements. For all financial statements filed with the Department for periods ending on or after March 31, 2010, each insurer must report all of its investment holdings on the list as not admitted assets.

This rule explicitly applies to “all investments by insurers holding a certificate of authority”. Since an insurer is prohibited by law from transacting insurance in the state of California if it doesn’t hold a California certificate of authority⁵, the Non-admitted Asset Rule, if valid, applies to every insurer permitted by law to operate in the state of California.

Furthermore, the Non-admitted Asset Rule would apply to all investments equally. It does not distinguish, for example, between equity investments and debt investments, even though these two different types of investments are subject to very different types and degrees of financial risk. This is clearly a “rule, regulation, order, or standard of general application” within the meaning of section 11342.600 of the APA.

The reporting requirement in the Non-admitted Asset Rule is similarly imposed upon “each insurer”. The rule provides no case-by-case review for individual insurers, nor does it provide any mechanism for individual insurers to appeal the designation of its assets as non-admitted assets. Both with respect to the requirement that listed assets are considered to be non-admitted by the Department and the requirement that they be reported that way by insurers, the Non-admitted Asset Rule is a rule of general application.

The Department has not identified any statutory authority for the Non-admitted Asset Rule. Therefore, any discussion of whether it implements, interprets, or makes specific the law enforced or administered by it must first speculate upon what law the Department might assert if it were to identify its purported legal authority. If the underground regulations were subjected to the APA rulemaking procedure, the Department might say that it is implementing a federal law that regulates commerce with Iran, or it might assert that it is implementing Ins. Code § 900. But because this is an underground regulation for which the Department has cited no authority, a rigorous analysis of whether the rule implements “the law enforced or administered by the” Department cannot be made based upon available information.

Fortunately, such an analysis is not truly necessary. If the Department does have some statutory authority for the challenged underground regulations, the specificity of the purported underground regulations makes it clear that they “implement, interpret, or make specific” that hypothetical authority and, thus, satisfy the APA definition of “regulation”. Alternatively, if there is no statutory authority that the challenged underground regulation implements, interprets, or makes specific, then the rule violates section 11342.1 of the APA. Only by subjecting these underground regulations to the rulemaking requirements of the APA may the authority question be resolved. But whatever authority the Department believes it has, it is beyond any question that the purported underground regulations attempt to implement it and make it specific.

There is no apparent express exemption permitting adoption of Non-admitted Asset Rule without complying with the rulemaking requirements of the APA. Section 900 of the Insurance Code requires insurers to file

⁵ California Insurance Code section 700.

annual and quarterly financial statements “in the number, form, and by the methods prescribed by the commissioner.” While this statute gives the Department an element of discretion regarding the manner of insurer filing of financial statements, it does not give any apparent authority to regulate the content of financial statements, as the Non–admitted Asset Rule purports to do. More importantly, it certainly does not amount to an express exemption from the rulemaking requirements of the APA. Even if this section authorizes the Department to regulate the content of financial statements, such regulation must be done pursuant to the rulemaking requirements of the APA. An express exemption must state explicitly that regulations may be adopted without complying with the requirements of the APA. Insurance Code section 900 does not provide such an express exemption.

There are no other express exemptions from the APA that permit the Non–admitted Asset Rule to be adopted without APA compliance. The general exemptions of Government Code § 11340.9 are not applicable. The Department has not identified any statutory authority pursuant to which it has promulgated the Non–admitted Asset Rule. Without the identification of authority and reference statutes it is difficult to demonstrate the non–existence of an express exemption definitively. The Petitioner is a California lawyer familiar with both the APA and the Insurance Code who knows of no express statutory exemption and who asserts that no such express exemption exists. A claim that this rule is subject to an express exemption amounts to an affirmative defense to the general rule that a regulation must be adopted pursuant to APA rulemaking. Therefore, the burden is on the Department to demonstrate that this rule is exempt from APA rulemaking requirements if that is the case. Rather than presuming that this purported underground regulation is expressly exempt from APA rulemaking, OAL should accept this petition and offer the Department the opportunity to defend the regulation on that basis, should it choose to do so.

4c) The Listed Company Rule. In Exhibit A the Department says that it “has developed a list of companies doing business with the Iranian oil and natural gas, nuclear, and defense sectors (“List”).” Although the Department asserts that the List was developed “[f]ollowing extensive research, analysis and consultation” and identifies four sources of information upon which the List was “based”, the Department identifies no criteria upon which a company was evaluated for inclusion or exclusion from the List. The List is the result of a “black box” analytical process whereby unknown inputs are evaluated pursuant to unknown criteria and the results merely announced. There is no way that any company could evaluate its operations to determine whether it will or will not result in being included on the List.

The Listed Company Rule is therefore difficult to evaluate. Due to the black box nature of the Department’s development of the rule, the universe of business entities subject to this analysis cannot be determined. For purposes of APA evaluation, however, it is clear that this is a rule of general application in at least two ways. To begin with, it is clearly applicable uniformly to all of the 50 companies on the list. Each of these companies has been identified by the Department as “doing business with the Iranian oil and natural gas, nuclear, and defense sectors.” The rule is applied generally to all companies on the List.

Furthermore, the Listed Company Rule does not distinguish between which of the identified “sectors” a listed company is associated. In terms of public perception, and thus in terms of reputational risk to the listed companies, it may make a large difference whether the company is identified with the Iranian oil sector or the Iranian defense sector. For example, it may be of little importance to one of the listed oil companies to be identified with the Iranian oil industry, but of a great deal of importance to that oil company if it is identified with the Iranian defense sector. The Listed Company Rule, however, does not accommodate these different interests. Since it applies to all listed companies equally, without distinguishing which of the listed “sectors” the companies are “doing business with”, it is a rule of general application.

In addition, the rule is generally applicable to all California insurers. By virtue of a company being included on the List, all insurers are required by the Department to treat investments (of whatever form) in that company differently from any investments in companies not on the List. In this manner also the Listed Company Rule is applied generally in California. It is a standard of general application.

The Listed Company Rule, like the Non–admitted Asset Rule, cannot be evaluated as an implementation of any specific statute since no statutory authority has been identified by the Department authorizing the rule. Again, the Department may assert that it is implementing Ins. Code section 900, federal law governing commerce with Iran, or some other statute, but that cannot be determined from available information. But as with the Non–admitted Asset Rule, the Department is either making statutory law specific, thus bringing this rule within the APA definition of “regulation”, or it is implementing a rule for which it lacks authority in violation of section 11342.1 of the APA. If there is statutory authority for the Listed Company Rule, it is a rule of general application which implements and makes specific that statutory authority the Department may have in this area. It is a regulation as defined by the APA.

As with the Non–admitted Asset Rule, there is no apparent express exemption permitting adoption of Listed

Company Rule without complying with the rulemaking requirements of the APA. The general exemptions of Government Code § 11340.9 are not applicable. The Department has not identified any statutory authority pursuant to which it has promulgated the Listed Company Rule. Without the identification of specific authority and reference statutes it is difficult to demonstrate the non-existence of an express exemption definitively. The Petitioner is a California lawyer familiar with both the APA and the Insurance Code who knows of no express statutory exemption and who asserts that no such express exemption exists. The burden is on the Department to demonstrate that this rule is exempt from APA rulemaking requirements, if that is the case. Rather than presuming that this purported underground regulation is expressly exempt from APA rulemaking, OAL should accept this petition and offer the Department the opportunity to defend the regulation on that basis, should it choose to do so.

4d) The Mandatory Response Rule. Exhibit C is a form which an executive officer of each California insurer is required to complete and return to the Department. In Exhibit A the Department “requests that your company agree not to invest in the future” in companies on the List. The mandatory response form requires each company to specify its intention regarding this request. Completion and return of this form is mandatory. The form was presented to California insurers subject to the instruction, found in Exhibit A, that “[y]our company must respond by March 12, 2010.” Pursuant to the email message conveyed in Exhibit D, the deadline for response was delayed until April 2, 2010, but the mandatory nature of the response was not changed.

Insurers who do not return the form to the Department would, pursuant to Exhibit A, be subject to potential sanctions. Exhibit A tells each insurer that “[i]f your company does not respond to or declines the Department’s request for a moratorium on future investments . . . the Department may publish your company’s name on the Department’s website.” Thus the Department has established a potential means to enforce the Mandatory Response Rule in the form of publicly identifying a non-compliant insurer — one that does not respond or that responds in a manner that the Department does not favor — on its website. Publication of an insurer’s name under these circumstances would carry the implication that the insurer has undesirable connections with Iran and, thus, the Department’s threatened sanction is that it will damage the reputations of non-compliant insurers by implicitly identifying them as collaborators with the government of Iran.

The Mandatory Response Rule applies to all California insurers. It imposes a mandatory requirement upon all of them (“[y]our company *must* respond”), and it establishes potential punishment for those insurers who

do not respond or who respond in a manner that the Department disfavors. It is a rule of general application which, in order to be valid, must be adopted pursuant to the rulemaking requirements of the APA.

As with the other two challenged underground regulations, the Mandatory Response Rule clearly implements and makes specific the statutory authority, if any, of the Department. The requirement imposed by the Department to file a specific response to a specific issue is far more specific than any requirement of any California statute. If there is statutory authority for this rule, the rule itself clearly implements and makes that authority specific. Since the Mandatory Response Rule is a rule of general application which implements and makes specific whatever authority the Department may have, it is a regulation pursuant to section 11342.600 of the Government Code.

As with the other two underground regulations contained in the Department’s communications, there is no apparent express exemption permitting adoption of Mandatory Response Rule without complying with the rulemaking requirements of the APA. The general exemptions of Government Code § 11340.9 are not applicable. The Department has not identified any statutory authority and reference pursuant to which it has promulgated the Mandatory Response Rule. Without the identification of authority and reference statutes it is difficult to demonstrate definitively the non-existence of an express exemption. The Petitioner is a California lawyer familiar with both the APA and the Insurance Code who knows of no express statutory exemption and who asserts that no such express exemption exists. The burden is on the Department to demonstrate that this rule is exempt from APA rulemaking requirements, if that is the case. Rather than presuming that this regulation is expressly exempt from APA rulemaking, OAL should accept this petition and offer the Department the opportunity to defend the regulation on that basis, should it choose to do so.

5) INFORMATION DEMONSTRATING THAT THE PETITION RAISES AN ISSUE OF CONSIDERABLE PUBLIC IMPORTANCE REQUIRING PROMPT RESOLUTION. There are at least three issues of considerable public importance requiring prompt resolution raised by this petition.

Issue #1: Legal Uncertainty Regarding Insurer Reporting and Reserving. The challenged underground regulations conflict with provisions of the Insurance Code and the California Code of Regulations, thus creating ambiguity regarding how insurers are to comply with the California law. Every insurer licensed to transact insurance in California is required, pursuant to California Insurance Code 900, to file annual and quarterly financial statements, which must be “completed in conformity with the Accounting Practices and

Procedures Manual adopted by the National Association of Insurance Commissioners” (Ins Code § 923). The challenged underground regulations purport to regulate the content of these financial statements in a way that is not consistent with the requirements of the Insurance Code § 923.

This is a matter of great importance. A company that files a false financial statement may lose its certificate of authority (Ins Code § 900.8). The correctness of financial statements must be certified by officers of the insurer (Ins Code § 903). The challenged underground regulations create legal uncertainty regarding the required contents of insurer financial statements and thus make it impossible for insurers to determine how to comply with the law.

If the purported underground regulations are valid an insurer reports investments in listed companies as admitted assets will violate these regulations. Conversely, if the challenged underground regulations are invalid, an insurer that prepares its financial statements in compliance with those underground regulations will violate the Insurance Code. Unless and until the validity of the challenged underground regulations is established through formal APA rulemaking, it is impossible for any insurer, no matter which choice it makes, to be certain that it is preparing its financial statements in compliance with the law.

The uncertainty created by these underground regulations is even greater for insurers licensed in California but domiciled in another state. Rather than forcing each insurer to prepare different financial statements to satisfy different reporting requirements in each state, state laws generally provide reciprocity in reporting standards. States require insurers to prepare their financial reports pursuant to the law of the state of domicile, and every state agrees to accept the financial reporting as required by the state of domicile. California imposes this requirement pursuant to regulations adopted by the Department in title 10, Cal Code Regs § 2309.5⁶. Due to the legal uncertainty created by the challenged underground regulations, insurers domiciled outside of California cannot know whether to prepare their annual financial statements in accordance with the requirements of the challenged underground regulations or the requirements of 10 CCR 2309.5 — the Department’s lawfully-adopted regulation.

This uncertainty does not merely affect the contents of an insurer’s financial statements. It has a significant impact in the market as well. Insurers are required to

maintain adequate financial reserves to support the insurance business that it writes (Ins. Code § 923.5). Only admitted assets can be used as reserves. Thus the validity of the challenged underground regulations has a direct impact on the amount of business that an insurer may transact. In simple terms, an insurer that has investments in companies on the List may lawfully write more insurance if the challenged underground regulations are void than it may write if they are valid.

Only by requiring the Department to comply with the rulemaking requirements of the APA will the validity of the challenged rules be determined and only then will insurers be able to prepare their financial statements with the level of certainty needed to comply with the accuracy and verification requirements of the Insurance Code. Filing incorrect financial statements can potentially put an insurer’s certificate of authority in jeopardy and can subject officers of insurance companies to legal exposure for falsely verifying financial statements. Resolution of these uncertainties is a matter of considerable public importance requiring prompt resolution.

Issue #2: Due Process for Listed Companies. The black box analysis employed by the Department in developing the List exposes the listed companies to potential reputational and economic harm without due process and without recourse. The Department has, through black box procedures which have never been subjected to public disclosure or evaluation, declared that the named companies are affiliated with Iran. Whether or not that is true, due process considerations dictate that companies subjected to such an evaluation should be advised of the standards by which they are being evaluated and should have a procedure for responding to that evaluation. The purported underground regulations do not allow this. This is a matter of considerable public importance requiring prompt resolution. Only by subjecting these underground regulations to the scrutiny provided by APA rulemaking can this be corrected.

Issue #3: The Scope of the Department’s Legal Authority. The failure to employ the rulemaking process means that the scope of authority that the Department may have in this area of regulation has never been subjected to public scrutiny. There is a substantial legal question whether it is within the scope of the Department’s statutory authority to pass judgment upon classes of insurer assets in the manner done in the challenged underground regulations or to require insurers to specify their future intentions regarding those investments.

In this case the Department has decreed generally that every listed company is deemed to be financially threatened with no apparent regard for the actual financial condition of any individual company. Whether or not the Department has the legal authority to make such

⁶ Title 10, Cal Code Regs § 2309.5 “The annual audited financial report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the Department of Insurance of the state of domicile.”

global determinations upon all investments in specified companies is a significant legal question with far-reaching implications. By enacting the challenged rules as illegal underground regulations the Department has avoided all scrutiny with respect to its authority. It is entirely possible that the Department is employing rules which exceed its authority in violation of section 11342.1 of the APA. Only by subjecting these rules to formal rulemaking pursuant to the APA may the Department's authority be properly evaluated.

6) CONCLUSION. The enactments by the Department reflected in Exhibits A–D constitute a significant exercise of regulatory power both over the companies which the Department has listed as being affiliated with Iran and over every insurer licensed to transact the business of insurance in California. This power has been exercised through rules of general application which have never been subjected to the scrutiny and public comment that is a central purpose of APA rulemaking. The Petitioner respectfully requests that OAL accept this petition so that the challenged regulations may be evaluated pursuant to the APA.

6) Certifications:

I certify that I have submitted copies of this petition and all attachments to the state agency which has issued, used, enforced, or attempted to enforce the purported underground regulation. The copies were submitted as follows:

Via hand delivery of a printed copy to:

Darrel Woo, Staff Counsel
300 Capital Mall, 17th Floor
Sacramento, CA 95814
(916) 492–3556

Via email in PDF format to:

Adam Cole, General Counsel
ColeA@insurance.ca.gov
(415) 538–4375

Peter Conlin, Counsel to the Commissioner
ConlinP@insurance.ca.gov
(916) 492–3199

I certify that all of the above information is true and correct to the best of my knowledge.

DATED: March 29, 2010

MICHELMAN & ROBINSON, LLP

By: WILLIAM L. GAUSEWITZ

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653–7715. Please have the agency name and the date filed (see below) when making a request.

File# 2010–0419–01
BOARD OF CHIROPRACTIC EXAMINERS
Law Violators

This action makes a minor amendment to the regulation that imposes a duty upon licensees to notify the Secretary or any member of the Board if they learn of a violation of the Chiropractic Act or regulations of the Board, changing the person to be notified to the Executive Officer or a designee.

Title 16
California Code of Regulations
AMEND: 314
Filed 05/27/2010
Effective 06/26/2010
Agency Contact:
Dixie Van Allen (916) 263–5329

File# 2010–0427–09
CALIFORNIA ALTERNATIVE ENERGY AND
ADVANCED TRANSPORTATION FINANCING
AUTHORITY
Amend Regulations for CAEATFA's Fee Program

The Public Resources Code creates the California Alternative Energy and Advanced Financing Authority (Authority) and authorizes it to fix fees and charges for projects to fund expenses incurred by the Authority in carrying out its duties. Existing section 10020 of title 4 of the California Code of Regulations sets fees for projects generally, but there are no specific fees established for renewable energy projects. This filing is the certificate of compliance for an emergency regulatory action which added a separate fee structure to section 10020 to establish a renewable energy program and lower the cost of financing these technologies while allowing the Authority to be self sustaining. The initial filing of this regulatory action was mandated to be in the form of emergency regulations and deemed necessary for the

immediate preservation of the public peace, health and safety, and general welfare by the Legislature pursuant to section 26011.6(b) of the Public Resources Code. This rulemaking revises the emergency regulations to establish a single fee structure.

Title 4
California Code of Regulations
AMEND: 10020
Filed 06/01/2010
Effective 06/01/2010
Agency Contact:
Samantha Russell (916) 654-6061

File# 2010-0415-02
COMMISSION ON TEACHER CREDENTIALING
Special Education Teaching & Services Credentials

This rulemaking concerns Special Education and the addition of Services Credentials and Added Authorizations. This rulemaking does the following, among other things:

1. it phases out the current preliminary level I and clear level II education specialists and replaces them with preliminary and clear education specialists. The new preliminary and clear requirements are in sections 80048.8 and 80048.8.1.
2. it provides for individuals enrolled in an education specialist teacher prep program who complete content in "autism spectrum disorders" to be authorized to conduct assessments, provide instruction, and special education related services to autistic students.
3. it provides for individuals who complete an education specialist teacher prep program that includes "content for teaching English learners as described in Education Code section 44259.5" to be authorized to provide instruction for English language development in grades pre-k to 12 and adults.
4. it adds a "Clinical or Rehabilitative Services Credential: Orientation and Mobility."
5. it adds a "Clinical or Rehabilitative Services Credential: Audiology."
6. it further provides additional definitions.

Title 5
California Code of Regulations
ADOPT: 80048.8, 80048.8.1, 80048.9, 80048.9.1, 80048.9.2, 80048.9.3 AMEND: 800.46.5, 80047, 80047.1, 80047.2, 80047.3, 80047.4, 80047.5, 80047.6, 80047.7, 80047.8, 80047.9, 80048.3, 80048.4, 80048.6 REPEAL: 80048.2
Filed 05/27/2010
Effective 06/26/2010
Agency Contact:
Terri H. Fesperman (916) 323-5777

File# 2010-0420-02
DEPARTMENT OF FOOD AND AGRICULTURE
Asian Citrus Psyllid Interior Quarantine

The Department of Food and Agriculture filed this timely certificate of compliance to make permanent five prior emergency regulatory actions, OAL file nos. 2009-0825-02E, 2009-0828-02E, 2009-1023-01E, 2009-1112-04E, and 2009-1123-10E, and the emergency readoption of OAL file nos. 2009-0825-02E and 2009-0828-02E in OAL file no. 2010-0216-03EE. These actions create or expand quarantine areas to regulate the movement of hosts and possible carriers of the Asian citrus psyllid (ACP), *Diaphorina citri*, within or from the counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, and San Diego, to help prevent the spread of the ACP, associated bacteria, and citrus greening disease. The regulations impose requirements on nursery stock within the quarantine area to be treated in a manner approved by the Department and to bear labels stating that it may not be moved outside the quarantine area, and allow for the movement of regulated articles within the quarantine area and for the movement of articles or commodities through a quarantine area, as specified.

Title 3
California Code of Regulations
AMEND: 3435
Filed 06/02/2010
Effective 06/02/2010
Agency Contact:
Susan McCarthy (916) 654-1017

File# 2010-0520-02
DEPARTMENT OF FOOD AND AGRICULTURE
European Grapevine Moth Interior Quarantine

This emergency regulatory action expands the quarantine areas for the European Grapevine Moth (EGVM), *Lobesia botrana*, in new areas of Merced, Mendocino, Solano and Sonoma counties. It is immediately necessary to implement quarantine actions in order to prevent the artificial spread of EGVM to the unfested areas of California. This emergency action expands the existing regulated areas in Napa, Solano and Sonoma counties by approximately 74 square miles, Mendocino by approximately 39 square miles and establishes a new quarantine area of approximately 108 square miles in Merced County for a total of approximately 1,616 square miles. Documentation of the requisite number of EGVM has been provided to substantiate the expansion of the quarantine.

Title 3
California Code of Regulations
AMEND: 3437(b)
Filed 06/01/2010
Effective 06/01/2010
Agency Contact:
Stephen S. Brown (916) 654-1017

File# 2010-0420-01
DEPARTMENT OF INSURANCE
California Low Cost Automobile Insurance Plan of Operations

In this rulemaking action, the Department of Insurance submitted amendments to the California Low Cost Automobile Insurance Plan of Operations (CLCAI Plan), which is incorporated by reference in title 10, California Code of Regulations, sec. 2498.6, by making minor clarifying revisions to the CLCAI Plan and updating revision dates to two forms incorporated by reference in the CLCAI Plan (AIP 126 and AIP 127).

Title 10
California Code of Regulations
AMEND: 2498.6
Filed 06/01/2010
Effective 06/01/2010
Agency Contact:
Bryant W. Henley (415) 538-4111

File# 2010-0423-02
DEPARTMENT OF SOCIAL SERVICES
Access to State Hearings Records Section 100

This Section 100 change without regulatory effect corrects a misleading title for Manual of Policies and Procedures (MPP) subsection 19-005.4 by substituting "Access to Case Records" for "Release of Information in Conjunction with a State Hearing".

Title MPP
California Code of Regulations
AMEND: 19-005
Filed 06/02/2010
Agency Contact:
Zaid Dominguez (916) 657-2586

File# 2010-0421-03
DEPARTMENT OF TRANSPORTATION
Fire Truck Axle Weight Exemptions

This is the timely resubmission of an action that updates the weight and length limits applicable to fire trucks with the goal of making California standards for fire trucks closer to national standards so that fire protection agencies can purchase standard equipment.

Title 21
California Code of Regulations
AMEND: 1411.1, 1411.7
Filed 06/02/2010
Effective 07/02/2010
Agency Contact: Casey Robb (916) 651-6125

File# 2010-0428-01
FISH AND GAME COMMISSION
Klamath-Trinity Rivers Sport Fishing

On April 15, 2010, the Pacific Fishery Management Council (PFMC) adopted Recreational Salmon Management Measures and recommended a harvest allocation of 12,000 Klamath River Fall Chinook (KRFC) for the recreational fishery in the Klamath River System. The Fish and Game Commission has amended section 7.50(b)(91.1) of title 14 of the California Code of Regulations which contains the sport fishing regulations for the anadromous waters of the Lower Klamath River Basin to conform with those PFMC recommendations and to make other changes.

Title 14
California Code of Regulations
AMEND: 7.50
Filed 05/26/2010
Effective 06/25/2010
Agency Contact:
Sherrie Fonbuena (916) 654-9866

File# 2010-0427-08
MANAGED RISK MEDICAL INSURANCE BOARD
AB 1422 — HFP Subscriber Premium Increase

Assembly Bill 1422 raised the family child contributions for the Healthy Families Program effective November 1, 2009. The Managed Risk Medical Insurance Board proposed by emergency filing to amend section 2699.6809 of title 10 of the California Code of Regulations to reflect these increases. Pursuant to section 12693.22 of the California Insurance Code, that filing was deemed an emergency and exempt from review by the Office of Administrative Law. This filing is the certificate of compliance for these emergency regulations.

Title 10
California Code of Regulations
AMEND: 2699.6809
Filed 05/26/2010
Effective 05/26/2010
Agency Contact: Dianne Knox (916) 324-0592

File# 2010-0421-04
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
Use of High Visibility Apparel—Private Roads and Off Highway Situations

This regulatory action substitutes updated terminology describing the high visibility safety apparel requirements for road construction flaggers, grade-checkers, surveyors, etc. and clarifies that the clothing requirements are applicable to any employees on foot and exposed to vehicular traffic hazards while working on private roadways or off-highway situations.

Title 8

California Code of Regulations

AMEND: 1590

Filed 06/02/2010

Effective 07/02/2010

Agency Contact: Marley Hart (916) 274-5721

**CCR CHANGES FILED
WITH THE SECRETARY OF STATE
WITHIN December 30, 2009 TO
June 2, 2010**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 2

05/25/10 AMEND: div. 8, ch. 65, sec. 55400
05/11/10 AMEND: 18945
05/06/10 AMEND: 1859.2
05/03/10 AMEND: 60040, 60045
04/21/10 AMEND: 1859.96, 1859.148.2, 1859.166.2
04/08/10 AMEND: 1859.76
03/23/10 AMEND: 18351
03/19/10 ADOPT: 59670
03/19/10 AMEND: 18942 REPEAL: 18630
03/11/10 AMEND: 18932.4
02/24/10 AMEND: 1859.2, 1859.41, Form SAB 50-01, Form SAB 50-02
02/23/10 AMEND: div. 8, ch. 16, sec. 37000
02/19/10 AMEND: 52400
02/11/10 ADOPT: 18421.9 AMEND: 18431
02/11/10 AMEND: 18950.3
02/09/10 ADOPT: 59660
01/26/10 ADOPT: 1899.570, 1899.575, 1899.580, 1899.585
01/25/10 AMEND: 58100
01/19/10 AMEND: div.8, ch. 102, sec. 59100
01/14/10 AMEND: Section 27000
01/13/10 ADOPT: div. 8, ch. 119, sec. 59640

01/11/10 ADOPT: 18229.1, 18944 REPEAL: 18944

01/05/10 AMEND: div. 8, ch. 49, sec. 53800

Title 3

06/02/10 AMEND: 3435
06/01/10 AMEND: 3437(b)
05/24/10 AMEND: 3434(b)
05/17/10 AMEND: 3591.5(a)
05/17/10 ADOPT: 3701, 3701.1, 3701.2, 3701.3, 3701.4, 3701.5, 3701.6, 3701.7, 3701.8
AMEND: 3407(e), 3407(f)
REPEAL: 3000, 3001, 3002, 3003, 3004
05/13/10 AMEND: 3437
05/04/10 AMEND: 3423(b)
05/04/10 AMEND: 3437(b)
05/04/10 AMEND: 3434(b)
05/03/10 AMEND: 3434(b), 3434(c) and 3434(d)
04/22/10 AMEND: 3434(b)
04/22/10 AMEND: 3406(b), 3406(c)
04/20/10 AMEND: 3437(b)
04/15/10 AMEND: 3434(b)
04/05/10 AMEND: 3434(b)
03/24/10 ADOPT: 3436
03/24/10 AMEND: 3588
03/17/10 AMEND: 3423(b)
03/15/10 AMEND: 3434(b)
03/10/10 AMEND: 3591.20(a)
03/10/10 AMEND: 3434(b)
03/04/10 AMEND: 3700(c)
03/04/10 AMEND: 3406(b)
03/03/10 REPEAL: 3279, 3433
03/03/10 AMEND: 3591.20
03/03/10 AMEND: 3406(b)
03/03/10 AMEND: 3423(b)
03/03/10 ADOPT: 3437
02/26/10 AMEND: 3435
02/18/10 AMEND: 3591.23
02/18/10 ADOPT: 3591.24
01/25/10 AMEND: 3434(b)
01/25/10 AMEND: 3406(b)
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 (renumbered to 2187.2), 2187.2
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 03/25/10 AMEND: 2480
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 02/18/10 AMEND: 155
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 05/19/10 AMEND: 3340.1
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 03/09/10 AMEND: 1016, 1017 REPEAL: 1016.1, 1017.1
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05/25/10 AMEND: 7966, 7970

03/26/10 AMEND: 10001

02/25/10 ADOPT: 6200, 6201, 6202, 6203

01/29/10 AMEND: 5000, 5001, 5002, 5010, 5011,
5012, 5013, 5020, 5020.5, 5021, 5022,
5023, 5023.5, 5024, 5025, 5026, 5027,
5028, 5029, 5030, 5032, 5034, 5036,
5038, 5040, 5043, 5050, 5051, 5052,
5053, 5054, 5055, 5056, 5057, 5060,
5061, 5062, 5063, 5070, 5071, 5072,
5073, 5080, 5081, 5082, 5082.5, 5083,
5090, 5094, 5301, 5302, 5304, 5306,
5308, 5310, 5312, 5314, 5316, 5318,
5320, 5322, 5324, 5326, 5328, 5332,
5336, 5338, 5340, 5342, 5344, 5346,
5348, 5350, 5352, 5354, 5356, 5360,
5362, 5364, 5366, 5368 REPEAL: 5042

Title 27

04/09/10 ADOPT: 22100, 22101, 22103, Division
2 Form CalRecycle 114 AMEND: 20164,
21200, 21570, 21640, 21685, 21820,
21840, 21865, 21880, 22102, 22211,
22220, 22221, 22231, 22234, 22245,
22248, Division 2 Appendix 3, Division 2
form Calrecycle 100, Division 2 form
Calrecycle 106

03/10/10 AMEND: 25903

Title MPP

06/02/10 AMEND: 19–005

05/17/10 ADOPT: 31–021 AMEND: 31–003,
31–410, 31–501

05/17/10 AMEND: 44–211

05/10/10 AMEND: 11–425, 22–001, 22–003,
22–009, 45–302, 45–303, 45–304,
45–305, 45–306

02/26/10 ADOPT: 31–021 AMEND: 31–003,
31–410, 31–501

01/29/10 ADOPT: 91–101, 91–110, 91–120,
91–130, 91–140